

Exhibit A A A

Yatram Indergit, et al. v. Rite Aid Corporation, et al. 1:08-cv-09361-PGG-HBP
Omar Riaz

July 11, 2011

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

YATRAM INDERGIT, on behalf of himself
and others similarly situated,

Plaintiff,

CIVIL ACTION NO. 1:08-cv-09361-

- vs -

PGG-HBP

RITE AID CORPORATION, RITE AID OF
NEW YORK, INC., and FRANCIS OFFOR as
Aider & Abettor,

Defendants.

-----x

July 11, 2011

9:56 a.m.

DEPOSITION of OMAR RIAZ, taken by
Defendants, pursuant to Fed.R.Civ.P. 30 and
agreement of counsel, held at the offices of EMG
New York, 250 Park Avenue, New York, New York
10177, before Janet Hamilton, a Registered
Professional Reporter and Notary Public of the
State of New York.

COPY

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2 with my hours. Looking forward to assign those
3 tasks to somebody else that would result in
4 going above my assignment hours.

5 Q. I take it there were times that you
6 assigned tasks to hourly employees that they did
7 not complete within the time that you had given
8 them?

9 A. Yes. Because -- yes. That
10 happened. Because they ran out of time. Their
11 assigned scheduled hours.

12 Q. And were there times that the
13 assistant store manager would assign work to
14 hourly employees and they would not finish the
15 work that had been assigned to them?

16 A. Would you please repeat that?

17 Q. Sure. Were there times that your
18 assistant manager assigned work to employees and
19 they did not finish work that had been assigned
20 to them?

21 A. Yes.

22 Q. So as a store manager, how did you
23 try to ensure that employees would finish the
24 assignments you had given them within the time
25 that you gave them?

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2 A. It was very, very challenging.

3 Almost impossible for them to finish those
4 assigned tasks and take care of the customers at
5 the same time. So there was always an ongoing
6 struggle with that; for them to complete those
7 tasks in a timely manner assigned to them and
8 also do customer service while they're on the
9 floor. Unless they're working in the back of
10 the store. Which, you know, it's not
11 accessible. It was not accessible by employees.

12 But being on the floor and trying to do those
13 tasks it humanly was not possible. They needed
14 more hours to get that work done.

15 Q. But my question was: What steps
16 did you take as the manager assigning the work
17 to try to make sure that they finished their
18 assigned work?

19 A. I jumped in myself into their task
20 and assignment and helped them.

21 Q. You would work alongside them?

22 A. Correct.

23 Q. And when you were working alongside
24 the hourly associates performing tasks that they
25 were also performing, were you still in charge

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2 of the store?

3 A. Yes.

4 Q. And you were still keeping an eye
5 out for customer service?

6 A. As humanly possible. Yes.

7 Q. And you were still keeping an eye
8 out for loss prevention issues?

9 A. Yes. And a lot of other things at
10 the same time. Part of my job description.

11 Q. Do you know what I mean by
12 "multitasking"?

13 A. Yes. I know what you mean by
14 "multitasking."

15 Q. As a store manager at Rite Aid, did
16 you have to multitask all the time?

17 A. Yes. All the time.

18 MS. BARBAREE: I think it's a good
19 time for a break.

20 (Recess, 11:57 a.m. to 12:04 p.m.)

21 CONTINUED EXAMINATION

22 BY MS. BARBAREE:

23 Q. Did you talk with anyone about your
24 testimony during the break?

25 A. No, I did not.

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2 A. I asked my senior store managers in
3 my district the easiest way to keep an eye. And
4 the answer was there is no easy way to keep an
5 eye. The answer was this is something you just
6 look at it and just look at it. You don't
7 really do anything about it. Because it is what
8 it is. And if you have more questions, go to
9 your district manager. And the district
10 manager's answer was it's not your part. You
11 just make sure your parking lot is clean. Make
12 sure your restrooms are clean. He used to tell
13 me those kind of things.

14 Q. But you figured out your own way to
15 look at your store's trend?

16 A. Yes. I have a bachelor's in
17 accounting. I always loved to look at numbers.
18 And I always wanted to -- I was very curious
19 about the numbers. Something that was not
20 totally or properly revealed to me in my
21 training.

22 Q. But you were able to figure it out
23 because of your accounting background?

24 A. Yes. And I kept playing with the
25 computers. And I got to those reports that

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2 would actually show you your monthly revenue,
3 your store operating expenses and damages and
4 employee wages. And somehow I was able to look
5 at the dollar, bottom dollar amount of what was
6 really being, the company was really being made
7 as far as the profits were concerned for the
8 company. And the store was not in profit. It
9 was not.

10 Q. And so, when you were able to look
11 at these types of reports, were you able to make
12 decisions about things you could do differently
13 to adjust some of the profitability issues?

14 A. Yes.

15 Q. What are the things that you did to
16 try to make adjustments to profitability as a
17 store manager?

18 A. To make sure I have more employees
19 on the floor when they're supposed to be there
20 for our customers. But mainly my district
21 manager had a lot of interaction with such
22 items. And he would just delegate stuff to me.
23 He would just tell me how to handle things.
24 Basically, he was just running the show. I was
25 just -- you know. I was just a -- like I always

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2 called myself there a glorified stocker.

3 Q. Well, for example, earlier you told
4 me that your assistant store manager would call
5 you about reordering merchandise. Did you try
6 to keep a close eye on merchandise ordering so
7 that you could make the store more profitable?

8 A. Yes. There are ways to get that
9 done. The ways to get there, the road is not
10 very easy, was not very easy to do that; to make
11 sure we don't ordering of -- ordering stuff that
12 we don't really need. And that was happening.
13 Every other delivery we had issues where parts
14 were being ordered and we already had them in
15 stock excessively. So had no way to return
16 them. They were there.

17 Q. Did you figure out why that was
18 happening?

19 A. Yes. That was happening because of
20 the lack of labor. Lack of hours. Not getting
21 those counts done on a weekly basis. And the
22 system didn't know that. The system thought we
23 were out of something. But physically we would
24 have 10 or 20 or more of that item in the store
25 available. The system would think we didn't

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2 have any. And the system would order it for us.

3 Q. Did you figure out a way to address
4 overstocking, even when you couldn't get your
5 counts done?

6 A. Please repeat that.

7 Q. Do you know what I mean by that?
8 So you said that sometimes you were not getting
9 the counts done of merchandise in the store?

10 A. Yes.

11 Q. And the system was automatically
12 reordering things because you didn't input the
13 counts?

14 A. Yes.

15 Q. And did you figure out a way of
16 adjusting the ordering without actually doing
17 the counts while you were store manager?

18 A. Yes. There was a very easy way to
19 have somebody assigned to that particular task
20 and have somebody go through the whole store in
21 a day or so to have the proper counts manually
22 done and manually entered into the system to
23 make sure the system knows from that point on to
24 not reorder the merchandise and the products
25 that we already had in the store. But to get

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2 were late or something. Missed their day. And
3 my district manager would make me clean the
4 parking lot. Instead of me spending more time
5 in the profit and loss trends and trying to
6 figure out how to get the store back into a
7 profit making store, I was also engaged in a lot
8 of activities that came down to me from my
9 immediate supervisor, my district manager. And
10 he said, "I want to get things done. No matter
11 how you do it, I want to get certain things
12 done.

13 He also offered me to work six days
14 a week. He told me to work six days a week, not
15 offer me -- which I declined, because of my
16 family commitments. And he said, "Okay." He
17 said, "Here's another option. Why don't you
18 work 12 hours a day instead of 10?" And I was
19 already doing so.

20 So, literally, I mean, it came to a
21 point where he told me to just come in the store
22 in the morning and leave at night. You know.
23 "Just stay in the store. Think it's your home.
24 And just stay there and, you know, you pay your
25 bills from here. You're doing everything from

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2 here. Remember?"

3 I said, "Yeah. I remember."

4 "Why don't you stay here? Think
5 it's your home. It's a big family here. All
6 the employees."

7 I said, "Yeah. I already think
8 that way. The employees are part of my family,
9 because I spend a lot of time with them. But I
10 also have another life away from the store. And
11 I would like to continue that life."

12 He would say, "Well, what if we
13 terminate you for some reason? You won't have
14 the life as comfortable as you have now. You
15 make all your money from here."

16 Well, that's common sense. People
17 go out to work and make money and feed their
18 kids and pay their bills. Phone bills or
19 whatever. So they can have a continuous life
20 cycle. But he would -- he had a totally
21 different vision about how to run the store.

22 I never met anyone in my life who
23 had so many things to say of that nature. And
24 those things didn't care about my position or my
25 designation. And he would bypass me and he

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2 would talk to employees directly about some of
3 these things. Even employees had his cell
4 number. So there goes the chain of command
5 concept.

6 So employees could actually call
7 him directly and talk to him. Which I
8 understand was some kind of open door policy.
9 But where am I at the end the day? What was I?
10 Just a glorified stocker.

11 Q. Are you finished with your answer?

12 A. Yes. Yes.

13 Q. On the occasion where you said that
14 he came to the store and he said that the
15 parking lot was dirty and hadn't been cleaned by
16 the vendor, did you get in touch with the
17 vendor?

18 A. Of course. Yes. The vendor had
19 missed their day. Two times a day. They were
20 already busy. They were third-party vendors,
21 not selected by me. I mean, I had no control
22 over them. All I could do was just leave a
23 voicemail with them or talk to somebody and tell
24 them, hey, please, come back to my store and
25 take care of this location. And they said okay.

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2 And they would always do it as they become
3 available. And that's the only thing I could
4 do, was a phone call.

5 Q. Did you ever change any of the
6 store's vendors while you were the store
7 manager?

8 A. No, I did not.

9 Q. And were there other types of
10 vendors that serviced the store, other than the
11 parking lot company?

12 A. Yes. The floor cleaning vendor was
13 also a company that would come into the store
14 one particular day of the week. And they would
15 stay in the store for a couple of hours and
16 clean all the store. They would buff the floor
17 and do a lot of serious cleaning on the floor.

18 Q. And as the store manager you were
19 responsible for making sure that these vendors
20 actually came and did the work that they were
21 being paid to do?

22 A. Yes. I was told to contact them if
23 you don't see them. If they don't come do their
24 work, contact them. And if you have anymore
25 problems, you contact your district manager and

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2 A. Customer service issues? I think
3 in one particular incident where -- in one
4 particular incident where a customer walked up
5 to me and complained to me that she was not
6 being -- she was not -- that she did not get
7 help right away when she asked for it, from
8 another employee on the floor. And I think one
9 time I wrote somebody up for that.

10 Q. Do you remember who that was?

11 A. That, I do not remember. I think
12 it was a female. I do not remember that, her
13 name.

14 Q. You told us -- sorry. Were you
15 finished?

16 A. I do not remember her name. No.

17 Q. You told us this morning that there
18 was the one incident where you terminated the
19 employee when HR called you about his background
20 check issue?

21 A. Yes.

22 Q. Other than in that instance, was
23 there ever a time that you wanted to terminate
24 one of the employees at 4822?

25 A. If I -- if I wanted to?

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2 Q. Yes.

3 A. Terminate an employee? I mean, I
4 would only need to do that if there was -- if
5 there was a huge issue with that employee or
6 there was some kind of --

7 Q. Did that ever happen?

8 A. Sorry?

9 Q. Did that ever happen?

10 A. I need to recall. Yes. I think
11 there was a cashier named Kashmere that you
12 mentioned earlier today. I also terminated her
13 for her not coming to work on time. And she had
14 more than one issue behind her termination. One
15 of them was the punctuality. The other one was
16 that her register was short more than one time.

17 Q. Did you actually sit down with
18 Kashmere and tell her that she was terminated?

19 A. Yes, I did.

20 Q. And it was your decision?

21 A. It was my decision to -- not my
22 decision. But it was my, I would say, more like
23 it was a recommendation to my district manager.
24 Because I was not able to fire somebody without
25 his consent. And I told him the situation and

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2 everything. And he said, okay, and there you
3 go. So...

4 Q. You understood that to terminate
5 and employee you had to partner with either your
6 district manager or human resources?

7 A. Just the district manager.

8 Q. Just the district manager. And
9 there was never a time that you told your
10 district manager you wanted to terminate someone
11 and he said no?

12 A. There was -- no. There was a time.
13 There was a time. Because I wanted to replace
14 somebody. And he said no to me. He said, "No.
15 He's good to go. Give him more time or keep an
16 eye on him or I will talk to him." He suggested
17 things of that nature to me. And I had to keep
18 the guy.

19 Q. Who was that?

20 A. His name is Nicholson. Last name,
21 I do not remember.

22 Q. What was his position?

23 A. Shift supervisor. He used to go by
24 the name Nick.

25 Q. Did your district manager ask you

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2 to provide him with more training?

3 A. No.

4 Q. And why did you want to replace
5 Nick?

6 A. Because Nick was very rude to
7 customers in my absence. I was made aware of
8 that by other employees; that this guy was very,
9 very rude to other people in a way that that
10 could bring other problems to the store. Like,
11 legal actions by the customers. Because that
12 guy would make statements and say things. And I
13 was very cautious about that. I was very
14 worried that this guy was going to do something
15 to the store that was going to cost us even --
16 you know. Something more. And I told my
17 district manager about that; that the way this
18 guy was behaving was very erratically. And the
19 district manager -- and then I actually sat down
20 with him. And I went over the whole thing with
21 him. And he got mad at me. And he left the
22 office with cell phone in his hand, dialing the
23 district manager's phone number. It was a very
24 dramatic situation in the store. He called the
25 district manager right in front of me. Went

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2 district manager said no?

3 A. There was no other time.

4 Q. You never made any other
5 recommendation, other than Melinda?

6 A. I did not, no.

7 Q. Did you understand that you were
8 responsible for developing your shift
9 supervisors?

10 A. Yes.

11 Q. And did you understand that you
12 were responsible for developing your assistant
13 store manager?

14 A. Yes.

15 Q. Did you think that your district
16 manager had responsibility for developing you?

17 A. Yes.

18 Q. Did he?

19 A. Yes.

20 Q. While you were the store manager at
21 4822, you were the highest ranking employee in
22 the store?

23 A. In the store. Yes.

24 Q. And you understood that you were in
25 charge of the store as the store manager?

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2 A. Yes.

3 Q. Did you try to treat your managers
4 like a team?

5 A. Yes. I always treated them as a
6 team.

7 Q. Were you aware of store managers in
8 your district who worked more than you?

9 A. I'm sorry. Please repeat that
10 again.

11 Q. Were you aware of store managers in
12 your district who worked more hours than you?

13 A. So your question is were my store
14 managers in my district?

15 Q. Were you aware that other store
16 managers in your district were working more
17 hours than you?

18 A. Yes. I was aware of a couple of
19 people.

20 Q. Were you aware of other store
21 managers in your district who were working less
22 hours than you?

23 A. No, I was not aware of that.

24 Q. How were you aware of other store
25 managers who were working more hours than you?

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2 A. I have, you know, people -- you
3 know. Every time we got together, our district
4 office, for our monthly store manager meetings,
5 we, you know, we talked to each other. And we
6 vented the air out to each other by, you know,
7 by talking things, like, you know, financial.
8 That, hey, I'm working six days. Somebody said
9 I'm working five days, 70 hours. I'm working
10 this, this, this. You know. So we all knew
11 that we were all being overworked, working over,
12 way over our assigned hours.

13 Q. As you sit here today, would you be
14 able to tell us how many hours you worked in any
15 particular week while you were store manager?

16 A. Yes. I worked somewhere around 60
17 to some -- some particular instance and
18 particular days of the week I also worked longer
19 hours than 60 a week, 65. Sometimes I would
20 open the store and close the store. That itself
21 is, 8:00 a.m. to 10:00 p.m., is a 14-hour long
22 shift. And I would also come into the store on
23 my days off for a couple of hours or so.

24 So, counting all these hours
25 together, you know, I go well above 60 hours a

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2 week.

3 Q. And so you said in particular
4 instances you might work more than 60 hours in a
5 week. What kinds of things might cause you to
6 work more than 60 hours a week as a store
7 manager?

8 A. Okay. Resetting the seasonal
9 aisles, which were in the very front of the
10 store. They used to be there. I don't know if
11 they are still there. Three or four aisles
12 right in front of the store, when you enter the
13 store. Those are called seasonal aisles. Those
14 aisles always need replanning, redesigning,
15 remerchandising. Everything. Because that
16 stuff is always seasonal. If it's Halloween
17 time, the Halloween stuff is there. Or if it's
18 Mother's Day, Mother's Day stuff goes there.
19 Everything else has to be moved. Things have to
20 go on the shelves. So there's always a major
21 change going on in those aisles, five aisles
22 there. So working on those five aisles with
23 just one man, doing a one-man show in those
24 aisles, it's not -- I mean, it requires lots of
25 hours for you to work there.

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2 Q. Can you think of any other
3 particular circumstances that might cause you to
4 work more than 60 hours in a week?

5 A. Yes. The long list of assignments.
6 Long list of tasks that would be given to me by
7 the district manager would require me to stay
8 there for very, very long hours. I would
9 finally have to pull myself out of there and go
10 home.

11 Q. Any other particular instances that
12 you can think of that cause you to work more
13 than 60 hours?

14 A. I won't call the situation as an
15 incident. I think it was an ongoing story. It
16 was an ongoing struggle that was going on
17 there --

18 Q. Were there particular --

19 A. -- on a weekly basis.

20 Q. I'm sorry. Were you finished?

21 A. Yes.

22 Q. Were there particular circumstances
23 that caused you to sometimes have to open and
24 close the store?

25 A. Yes. If somebody had called in

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2 that day and my district -- if my ASM was also
3 off that day, and if somebody had called in and
4 somebody had to go to the doctor's office or
5 something, I would -- I would just go home for
6 an hour or so and come right back and close the
7 store.

8 Q. Did you use the daily tour sheet?

9 A. Daily tour sheet?

10 Q. Yes.

11 A. I did use the daily tour sheet in
12 the beginning, right after I finished my
13 training. But then it became my habit just to
14 use my regular notepad, to just jot down stuff
15 that needed to be taken care of that day. Stuff
16 that I could see when entering the store,
17 opening the store that day.

18 Q. Instead of using the daily tour
19 sheet?

20 A. Yes. It works the same.

21 Q. But you always, when you opened,
22 part of your responsibility was to walk the
23 store and figure out things that needed to
24 happen that day?

25 A. Exactly. Yes.

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2 Q. You would agree that you were
3 responsible for safety in the store as well?

4 A. I was responsible for safety along
5 with everybody else that was working the store.

6 Q. If you saw an unsafe situation in
7 the store, you needed to address that?

8 A. Yes. Yes. Or if my cashier saw
9 it, he or she would also be able to address the
10 issue.

11 Q. Do you know what a "sysm" is?
12 S-y-s-m.

13 A. Yes. Sysm is an e-mailing. It's a
14 way of communication. It's a way of
15 communication, internal communication between
16 employees and corporate and store managers and
17 stuff like that. Sysm is like an e-mail.

18 Q. Do you know if it was e-mail based?

19 A. It was e-mail based. Intranet
20 based, I think. Intranet. More secure than
21 Internet.

22 Q. Do you remember that it looked like
23 the old DOS screen?

24 A. Yes. Old DOS screen. Exactly.

25 Q. Greenish green?

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2 Q. Okay. So in setting the schedule
3 every week, did you feel that you were
4 controlling store expenses?

5 A. No. I was not in control of my
6 expenses.

7 Q. You did not think that the way you
8 scheduled employees was one way that you could
9 control expenses in the store?

10 A. Like I said earlier, those expenses
11 were being controlled already by my supervisor.

12 Q. Okay. Let's look at the next
13 category, Page 2 of Exhibit 4. Customer
14 Focused. Do you see anything there that you
15 felt you were not responsible for as the store
16 manager?

17 A. Yes. I was responsible for all
18 those bullet points there.

19 Q. Okay. Turn to Page 3 of Exhibit 4.
20 Accountability. Let me know if any of those
21 were things that you were not responsible for.

22 A. A few things. Adjust work plans to
23 meet changing company needs.

24 Q. Anything else?

25 A. Yes. Personally manages

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2 productivity by prioritizing tasks appropriately
3 based on needs and supervisor instructions.

4 Q. So I'm a little confused by your
5 disagreement with those. We did talk earlier
6 about the fact that you would decide what work
7 needed to be done on a particular day. Correct?

8 A. Yes.

9 Q. And you would also prioritize the
10 work that needed to be done on a particular day.
11 Correct?

12 A. I would have a guideline from my
13 district manager how to prioritize work.

14 Q. But as you were assigning work to
15 associates who were working for you, weren't
16 there times that you said "I want you to do this
17 first. And if you finish that, then do this"?

18 A. Of course. I did say those things.
19 But those things came down to me from another
20 individual.

21 Q. And -- well, no one was telling you
22 make sure Melinda does this first today and this
23 second, were they?

24 A. Yes. Actually, yes.

25 Q. Who was telling you that?

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2 A. Mr. Kal.

3 Q. He actually called you every day
4 and told you who should do what?

5 MR. VALLI: Objection to form.

6 A. He actually told me every day.

7 Q. (By Ms. Barbaree) And told you
8 which employee should do what?

9 A. He would talk to me about the tasks
10 for the day and who those tasks were assigned to
11 and how they were being done and the work
12 progress.

13 Q. So he would ask you who you had
14 assigned the tasks to?

15 A. Yes. Yes.

16 Q. Did you sometimes make changes in
17 your work plans based on whatever happened that
18 particular day?

19 A. Yes.

20 Q. Check out the next category, on
21 Page 3. Teamwork. Any of those areas things
22 that you felt you were not responsible for?

23 A. Teamwork. Where do you see
24 Teamwork? Page 3?

25 Q. Page 3. In the middle of the page.

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2 Competency 3. Teamwork.

3 MR. VALLI: Do you want me to point
4 it out? I will.

5 MS. BARBAREE: Sure.

6 Sorry. We weren't finished with
7 that page yet.

8 A. Demonstrates flexibility, adapts
9 well to change.

10 Q. (By Ms. Barbaree) You did not have
11 to be flexible as a store manager?

12 A. I would have loved to do so, but I
13 was not very flexible. There are so many things
14 that I could and could not do. So -- a few
15 things that limited my ability to do so.

16 Q. So you were not as flexible as you
17 would have liked to have been?

18 A. Of course. Yes.

19 Q. There were things that you could be
20 flexible about, but things that you could not?

21 A. Yes.

22 Q. Look at the next competency
23 initiative. Are those things that you did as a
24 store manager?

25 A. Anticipates needs and acts

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2 revisited.)

3 Q. (By Mr. Valli) I'm going to ask you
4 just about Page 1 and 2 right now. Page 1 and 2
5 go together. Correct? They're for one week.

6 A. That is correct.

7 Q. Okay. And going to the second
8 page, the last entry, it has Nirmal Saha. But
9 all the time has been whited out. Did you do
10 that, do you know?

11 A. I did that. Yes.

12 Q. Do you know if Nirmal was on
13 vacation this week?

14 A. Exactly.

15 Q. Okay. And now, if you look at one
16 column up, Omar Riaz?

17 A. Yes.

18 Q. Are you scheduled every single day
19 that week?

20 A. Yes.

21 Q. And did you work every single day
22 that week?

23 A. Yes.

24 Q. Approximately 70 hours?

25 A. Yes.

[Page 310]

1 O. Riaz, 7/11/11

2 Q. And if you look at those entries,
3 they're all either 7:45 or 7:30. Is that
4 correct?

5 A. That's correct.

6 Q. What does that mean? Did you open
7 every day?

8 A. I opened every day.

9 Q. And who closed?

10 A. My shift supervisor.

11 Q. Who?

12 A. Nicholas Dickson.

13 Q. Okay. So when you described the
14 closing procedures before --

15 A. Yes?

16 Q. -- did Nicholas Dickson perform all
17 those closing procedures?

18 A. Yes.

19 MS. BARBAREE: Objection to the
20 form.

21 A. Yes, he did.

22 Q. (By Mr. Valli) Okay. Well, you
23 assume that he did. Correct?

24 A. Correct.

25 Q. Each morning when you came in on

[Page 311]

1 O. Riaz, 7/11/11

2 this week, did you notice if anything wasn't
3 done the night before in terms of closing
4 procedures?

5 A. Many things I noticed.

6 Q. Did you ask Mr. Dickson why?

7 A. Mr. Dickson's excuse was the lack
8 of manpower.

9 Q. Okay. Does Mr. Dickson deal with
10 the cash when he closes?

11 A. He did. He made the deposits.
12 Yes. And counted the register before closing
13 the registers.

14 Q. He has access to the safe?

15 A. Yes.

16 Q. He has access to the alarm codes?

17 A. Yes, he had.

18 Q. Okay. Before you talked about
19 customer service and repeat customers.

20 A. Yes.

21 Q. What, if anything -- withdrawn.
22 Did you attempt to provide
23 excellent customer service?

24 A. I always intended to provide
25 excellent customer service.

[Page 312]

1 O. Riaz, 7/11/11

2 Q. Did anything impair that ability?

3 A. Please repeat that.

4 Q. Did anything impair your ability to
5 provide excellent customer service?

6 A. A number of factors actually
7 impaired my ability to do so. And I could go
8 on, but the number one issue, like I've been
9 saying that all day, was the understaffing, not
10 getting enough hours, and having lots of work
11 being put on me that hindered, slowed down my
12 progress, and made me, almost disabled me from
13 carrying out my actual duties with the
14 distraction that I was involved in. Such as
15 cleaning the restrooms. Preparing the shelves.
16 Looking for dead rats under the shelves.
17 Cleaning parking lots. Things of that nature.

18 Q. In terms of Exhibit 4 -- I think
19 it's this. No. I'm wrong.

20 The first page is Superior
21 Experience. I just want to call your attention
22 to Page 1, down at the bottom, where it says Be
23 Profitable.

24 A. Yes.

25 Q. And it says "LY shrink of 74,353 at

Yatram Indergit, et al. v. Rite Aid Corporation, et al. 1:08-cv-09361-PGG-HBP
Omar Riaz July 11, 2011

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A C K N O W L E D G M E N T

STATE OF ~~NEW YORK~~ ^{NEW JERSEY})

: ss

COUNTY OF ~~Hudson~~)

I, OMAR RIAZ, hereby certify that I
have read the transcript of my testimony taken
under oath in my deposition of July 11, 2011;
that the foregoing transcript is a true,
complete, and correct record of my testimony;
and that the answers on the record as given by
me are true and correct.


OMAR RIAZ

Signed and subscribed to before me
this 9th day of August, 2011.


NOTARY PUBLIC

GENEVA BROOKS
NOTARY PUBLIC
STATE OF NEW JERSEY
MY COMMISSION EXPIRES JULY 15, 2014
I.D.# 2058687

Exhibit BBB

Yatram Indergit, et al. v. Rite Aid Corporation, et al.
Cinda Riley

1:08-CV-09361-PGG-HBP
August 12, 2011

Page 1

STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

YATRAM INDERGIT, ON BEHALF OF
HIMSELF AND OTHERS SIMILARLY
SITUATED,

PLAINTIFF,) CASE NO.

) 1:08-CV-09361

vs.)

) -PGG-HBP

RITE AID CORPORATION, RITE AID OF
NEW YORK, INC., AND FRANCIS OFFOR AS
AIDER & ABETTOR,

DEFENDANTS.)

DEPOSITION OF CINDA RILEY
TAKEN FRIDAY, AUGUST 12, 2011
LOS ANGELES, CALIFORNIA

Reported by Audra E. Cramer, CSR No. 9901

1 A. No.

2 Q. How did you inform the person that he or she
3 was banned from the store?

4 A. We have a trespass form, and we handed them
5 that and told them they weren't allowed on Rite Aid
6 property.

7 Q. How many customers do you think you banned from
8 the store?

9 MS. SCOTT: Objection. Form.

10 THE WITNESS: I have no idea.

11 BY MR. SCOTT:

12 Q. More than one?

13 A. Yes.

14 MR. SCOTT: Hand you what's been marked as
15 Exhibit 5.

16 (Whereupon, Exhibit 5 was marked
17 for identification.)

18 BY MR. SCOTT:

19 Q. Exhibit 5 is a somewhat rough copy of your
20 performance appraisal as a store manager at 6341
21 administered in February of '02; right?

22 A. Yes.

23 Q. And Terry would have been your district manager
24 at this time?

25 A. Yes.

1 Q. And this is a performance review that you
2 received as a store manager; right?

3 A. Yes.

4 Q. And that's your signature on the last page of
5 the exhibit?

6 A. Yes.

7 Q. When asked the primary duties and
8 responsibilities of the store manager position, Terry
9 wrote, "Store manager is in charge of total store
10 operation"; right?

11 A. Yes.

12 Q. And that was accurate; correct?

13 A. No.

14 Q. Why was that not accurate?

15 A. Because when he would come into my store, he
16 would -- we would do store walks, and I'd have to create
17 a list, and he would tell me to change this, to change
18 that; this wasn't what he thought it would be. He'd
19 also tell me -- like scheduling, he told me I couldn't
20 have a sweetheart schedule, which is, like, a
21 Monday-through-Friday schedule for employees. He said
22 Rite Aids frowned upon schedules like that.

23 And I said, "Well, I'm not allowed to give them
24 more money, but I can give them a better schedule."

25 Q. By "them," you mean your employees?

1 A. Yes.

2 Q. So you don't believe you were in charge of
3 total store operations because Terry also had a hand in
4 the store operations?

5 A. Yes.

6 Q. And Terry would come in about once a month?

7 A. Yes.

8 Q. And would issue you directives when he came in?

9 A. Yes.

10 Q. And outside of that direction from Terry, you
11 were in charge of total store operations; right?

12 A. Well, unless it was an HR problem. Then I
13 had -- every step had to be documented with HR. I had
14 to talk to them about different issues with employees,
15 and I didn't have the authority to fire anybody unless
16 it was approved by HR.

17 Q. When you say "HR issue," you mean personnel
18 issue?

19 A. Yes.

20 Q. And personnel issues you had to run through HR?

21 A. Yes.

22 Q. There was required documentation you had to
23 complete with respect to personnel issues?

24 A. Yes.

25 Q. You were in charge of completing the

1 documentation?

2 A. Or the other members of management.

3 Q. The other members of management were under your
4 supervision?

5 A. Yes.

6 Q. So when you wanted to fire someone, you had to
7 complete the required documentation as to that person?

8 A. Well, I never wanted to fire somebody. But if,
9 say, there were cash control problems, it all had to be
10 documented. And we would try to work with them, you
11 know, different forms of -- maybe having somebody else
12 work side by side with them during cashiering to see
13 what the issues were.

14 Q. Did you ever recommend when you were a
15 store manager that somebody be terminated and that
16 person was not terminated?

17 A. No.

18 Q. Did you ever fire any employees?

19 MS. SCOTT: Objection. Form.

20 THE WITNESS: I don't remember.

21 BY MR. SCOTT:

22 Q. When Terry gave you this evaluation and wrote,
23 "Store manager is in charge of total store operations,"
24 did you say, "Terry, I am not in charge of total store
25 operation"?

1 MS. SCOTT: Objection. Form.

2 THE WITNESS: I don't remember.

3 BY MR. SCOTT:

4 Q. In the "Comments" section at the end of the
5 page, when it asks you, "What are your comments, if any,
6 regarding this appraisal?" you didn't write, "This
7 appraisal is inaccurate"; correct?

8 A. No.

9 Q. That means that you didn't write it; right?

10 A. No.

11 Q. Did you write in the "Comments" section, "This
12 appraisal is inaccurate"?

13 A. No.

14 Q. Can you take a look at the "Primary Duties and
15 Responsibilities" section on the first page.

16 Terry wrote, "One of the primary duties and
17 responsibilities of this position is overseeing store
18 conditions, including facing, ordering, et cetera."

19 Do you agree with that?

20 A. Where am I looking?

21 Q. No. 1 in "Primary Duties and Responsibilities."

22 A. Yes.

23 Q. Do you agree you had to oversee store
24 conditions, including facing and ordering, as a
25 store manager?

1 A. For facing and ordering, yes.

2 Q. 2, he wrote, "In charge of labor, front end and
3 pharmacy. Must hit corporate budgeting goals."

4 Do you agree you were in charge of labor,
5 front end and pharmacy and that -- strike that.

6 Do you agree that you were in charge of labor
7 and that front end and pharmacy must hit corporate
8 budgeting and goals?

9 MS. SCOTT: Objection. Form.

10 THE WITNESS: I don't believe that I was
11 ultimately in charge of those, because like I said, they
12 would call and ask me to cut hours or...

13 BY MR. SCOTT:

14 Q. You could not set the labor budget for your
15 store?

16 A. No.

17 Q. Within the labor budget for your store, you
18 were responsible for making sure that that labor did not
19 exceed your budget though; right?

20 A. Yes.

21 Q. That was true for both the front end and the
22 pharmacy?

23 A. Yes.

24 Q. 3 under "Primary Duties and Responsibilities,"
25 he wrote, "Must hit goals for sales shrink and

1 profitability."

2 A. Yes.

3 Q. And as a store manager, you did have to hit
4 your sales shrink and profitability goals; right?

5 MS. SCOTT: Objection. Form.

6 THE WITNESS: Yes.

7 BY MR. SCOTT:

8 Q. 4, he wrote, "In charge of hiring and
9 discipline, et cetera, for front end and pharmacy."

10 A. Yes, he wrote that.

11 Q. Do you agree with that?

12 A. No. Like I said before, discipline had to be
13 run through HR. And what was the first thing? In
14 charge of...

15 Q. Hiring.

16 A. I would say I was in charge of hiring.

17 Q. And for discipline, you could verbally
18 discipline an employee whenever you wanted to; right?

19 MS. SCOTT: Objection. Form.

20 THE WITNESS: It still had to be documented.

21 BY MR. SCOTT:

22 Q. Every time you verbally disciplined an
23 employee, it had to be documented?

24 A. Yes. It didn't have to be a written -- like, a
25 warning or anything, but I had to write down, "On

1 such-and-such day I talked to John Doe about" --
2 whatever the issue was.

3 Q. Did you have to get HR approval prior to
4 verbally disciplining an employee?

5 A. No.

6 Q. Did you have to get HR approval prior to
7 writing up an employee if that write-up was the first
8 write-up?

9 A. I didn't have to get their approval, but I was
10 supposed to let them know when I did a write-up.

11 Q. After the fact?

12 A. Yes.

13 Q. And if it was a final warning, then you had to
14 get HR approval.

15 A. Yes.

16 Q. And to terminate someone, you had to get HR
17 approval?

18 A. Yes.

19 Q. You had to partner with them to make sure that
20 everyone was being treated fairly?

21 MS. SCOTT: Objection. Form.

22 THE WITNESS: I don't know if it was for being
23 treated fairly, but everyone was treated the same.

24 BY MR. SCOTT:

25 Q. Everybody was treated equally?

1 A. Yes.

2 Q. As a store manager, you're evaluated on whether
3 you hit payroll; right?

4 A. Yes.

5 Q. And whether you hit sales?

6 A. Yes.

7 Q. And whether you hit your planned
8 Abida [phonetic]?

9 A. EBITDA?

10 Q. EBITDA.

11 A. Yes.

12 Q. And what is EBITDA?

13 A. Something about before something and
14 amortization. It's...

15 Q. It's a way of looking at the store's bottom
16 line; right?

17 A. Yes.

18 Q. And it compares profits against losses; right?

19 A. Yes.

20 Q. And that's something that you're evaluated on
21 as a store manager?

22 A. Yes.

23 Q. As a store manager, your most important duty is
24 to make the store as profitable as possible; right?

25 MS. SCOTT: Objection. Form.

1 a detailed work list for you and your employees?

2 A. Yes.

3 Q. We've got one more of these, and then we'll
4 break.

5 As a store manager, you're evaluated on the
6 overall profitability of the store; correct?

7 MS. SCOTT: Objection. Form.

8 THE WITNESS: Yes.

9 MR. SCOTT: I'm going to hand you what's been
10 marked as Exhibit 10.

11 (Whereupon, Exhibit 10 was marked
12 for identification.)

13 BY MR. SCOTT:

14 Q. Exhibit 10 is your self-appraisal from March
15 of 2006 when you were a store manager at Store 5256;
16 right?

17 A. Yes.

18 Q. Under the first section "Objectives of Your
19 Job" and whether you have met or exceeded them during
20 the past year, you wrote, "Running a profitable store.
21 Beat my EBITDA plan controlling payroll"; right?

22 A. Yes.

23 Q. Running a profitable store was an objective of
24 yours?

25 A. Yes.

1 Q. Beating your EBITDA plan was an objective of
2 yours?

3 MS. SCOTT: Objection. Form.

4 THE WITNESS: Yes.

5 BY MR. SCOTT:

6 Q. And controlling payroll was an objective of
7 yours?

8 MS. SCOTT: Objection. Form.

9 THE WITNESS: Like I said, dictated by the
10 district manager on conference calls and anytime he
11 needed to make his budget.

12 BY MR. SCOTT:

13 Q. Payroll is a controllable store expense;
14 correct?

15 MS. SCOTT: Objection. Form.

16 THE WITNESS: Yes.

17 BY MR. SCOTT:

18 Q. And an example of an uncontrollable store
19 expense is rent; right?

20 A. Yes.

21 Q. And when you control payroll as a controllable
22 store expense, you improve the profitability of the
23 store; right?

24 MS. SCOTT: Objection. Form.

25 THE WITNESS: But when you hire someone, they

1 expect a certain amount of hours. And as a RAPSTAR
2 thing, I didn't feel like I could ask them -- they had
3 their bills to pay, and I didn't like having to tell
4 someone they couldn't come in.

5 MR. SCOTT: I'm going to object to that
6 response as nonresponsive.

7 Q. When you control payroll and lower payroll,
8 that improves the profitability of the store; correct?

9 MS. SCOTT: Objection. Form.

10 THE WITNESS: On paper.

11 BY MR. SCOTT:

12 Q. And I understand that you wanted to give your
13 employees as many hours as they wanted --

14 A. As many hours as my budget said I could.

15 Q. -- but bottom-line figures, if you're spending
16 less money on payroll, you're making more money in the
17 store; right?

18 MS. SCOTT: Objection. Form.

19 THE WITNESS: But it usually wasn't my store
20 that wasn't making their plan. It was other stores and
21 so that my boss could make his budget, because he was
22 given a budget too. You know, these are your sales
23 plans for the month, you know, for all combined stores.
24 So then he would call me because he knew I would come in
25 and work the extra.

1 Q. Did Lee do that?

2 A. He never got to that point.

3 Q. Did George ensure all merchandise is set up
4 according to planograms received from the corporate
5 office?

6 A. Yes.

7 Q. Did Lee do that?

8 A. He wasn't around long enough to get those
9 responsibilities.

10 Q. He was around at least six months; right?

11 A. But he couldn't even log on a till. So we
12 worked with him, so he was never actually responsible
13 for making sure those things got done.

14 Q. I understand. I'm just saying he was there for
15 at least six months.

16 A. Yes.

17 Q. Okay.

18 Did George execute weekly sales ads and price
19 changes?

20 MS. SCOTT: Objection. Form.

21 THE WITNESS: Yes.

22 BY MR. SCOTT:

23 Q. Did Lee?

24 MS. SCOTT: Objection. Form.

25 THE WITNESS: No.

1 BY MR. SCOTT:

2 Q. Did George process recalled, damaged, outdated
3 and transferred merchandise?

4 A. Yes.

5 Q. Did Lee?

6 A. No.

7 Q. Did George receive merchandise deliveries from
8 vendors and Rite Aid distribution centers?

9 MS. SCOTT: Objection. Form.

10 THE WITNESS: Yes.

11 BY MR. SCOTT:

12 Q. Did Lee?

13 MR. SCOTT: Objection. Form.

14 THE WITNESS: I think he did do some DSD
15 receiving.

16 BY MR. SCOTT:

17 Q. Did he perform that duty in its entirety?

18 A. Yes.

19 Q. Did George verify vendor invoice information is
20 accurate and enter them into the accounts payable
21 system?

22 A. I don't think he paid invoices online.

23 Q. Did Lee do that?

24 A. No.

25 Q. Did any assistant store manager that you worked

1 with do that?

2 A. I don't think so.

3 Q. Do you currently do that?

4 A. I have probably three or four times since I've
5 been there.

6 Q. As an ASM?

7 A. Yes.

8 Q. Did George prepare the retail store for
9 physical inventory by ensuring merchandise on the sales
10 floor and in the stockroom is in order and easy to
11 access?

12 A. Yes.

13 Q. Did Lee do that?

14 A. No.

15 Q. Did George analyze operating reports and make
16 recommendations for improvement?

17 MS. SCOTT: Objection. Form.

18 THE WITNESS: I believe -- we always went over
19 the P&L to see what we could improve, but I don't
20 remember him making recommendations.

21 BY MR. SCOTT:

22 Q. Did Lee go over the P&L with you?

23 A. I showed it to him a couple of times, but he
24 never made any recommendations.

25 Q. In your absence, did George utilize Staffworks

1 Q. Did you ever do a performance review for a
2 pharmacy technician?

3 A. I don't believe so.

4 Q. If I asked you a question today and you didn't
5 understand it, you asked me to clarify it; right?

6 A. Yes.

7 Q. And if you answered the question without asking
8 me to clarify, I can assume that you understood it; is
9 that fair?

10 MS. SCOTT: Objection. Form.

11 THE WITNESS: Yes.

12 MR. SCOTT: I pass the witness pending recross.

13 MS. SCOTT: Can we just go off the record for a
14 little while?

15 MR. SCOTT: Sure.

16 MS. SCOTT: I just need, like, five minutes.

17 MR. SCOTT: Take whatever you need.

18 (Recess taken.)

19

20 EXAMINATION

21 BY MS. SCOTT:

22 Q. Ms. Riley, I'll be asking you some questions
23 now.

24 As a store manager at Rite Aid, did you
25 complete nonmanagerial tasks?

1 MR. SCOTT: Object to the form.

2 THE WITNESS: Yes. I would clean the
3 restrooms, sweep the floor, stock the shelves, usually
4 for more than half my day.

5 BY MS. SCOTT:

6 Q. Do you know what I mean when I say
7 "nonmanagerial tasks"?

8 A. Items or tasks that aren't -- that I'm only not
9 able to do, like make the schedule and things like that.

10 Q. When you say that you're not only able to do,
11 do you mean that other employees in the store would be
12 able to do those tasks, such as cashiers?

13 A. Yes. They're not able to write schedules or
14 pay invoices. They can now. With the Telxon, they can
15 pay invoices, but if they had to go through the console,
16 they couldn't do it. So, yeah, I'd spend more than half
17 my day doing the nonmanagerial tasks that used to be
18 done mostly with cashiers.

19 Q. Would you consider stocking shelves a
20 nonmanagerial task?

21 MR. SCOTT: Object to form.

22 THE WITNESS: Yes.

23 BY MS. SCOTT:

24 Q. Did you stock shelves as a store manager at
25 Rite Aid?

1 A. Yes.

2 Q. Would you consider pricing items a
3 nonmanagerial task?

4 MR. SCOTT: Object to form.

5 THE WITNESS: Yes.

6 BY MS. SCOTT:

7 Q. Did you price items when you were a
8 store manager at Rite Aid?

9 A. Yes.

10 Q. Would you consider working the cash register a
11 nonmanagerial task?

12 MR. SCOTT: Same objection.

13 THE WITNESS: Yes.

14 BY MS. SCOTT:

15 Q. Did you work the cash register as a
16 store manager at Rite Aid?

17 A. Yes.

18 Q. Would you consider watering plants a
19 nonmanagerial task?

20 MR. SCOTT: Object to form.

21 THE WITNESS: Yes.

22 BY MS. SCOTT:

23 Q. Did you water plants as a store manager at
24 Rite Aid?

25 A. Yes.

1 Q. Are there any other nonmanagerial tasks you
2 completed as a store manager at Rite Aid that you can
3 think of?

4 A. I would come in at 5:00 a.m. and offload the
5 truck by myself.

6 Q. Why wouldn't there be someone helping you
7 unload the truck?

8 A. I didn't have the budget for it. And when I
9 talked to Marv about it, he just said, "Sorry."

10 Q. Who set the budget at Rite Aid?

11 MR. SCOTT: Object to form.

12 THE WITNESS: I'm not really sure how they come
13 up with their budgets. I'm assuming that the DM has
14 some input, but I'm not really sure how it's done.

15 BY MS. SCOTT:

16 Q. As a store manager at Rite Aid, were you able
17 to alter the budget?

18 A. You mean raise the amount of hours I used or...

19 Q. Raise or lessen. However you felt needed.

20 A. If I raised it, I got a SYSM -- if I used more
21 hours than I was budgeted, then I had to answer to the
22 DM as to why. And I lowered it when I was instructed to
23 do so by the DM.

24 Q. Did you ever request from the DM additional
25 hours when you were a store manager at Rite Aid?

1 A. Yes.

2 Q. And what resulted?

3 A. Nothing. He said, "Everybody wants more
4 hours."

5 Q. So you didn't end up getting those additional
6 hours that you requested.

7 A. No.

8 Q. Going back to nonmanagerial tasks, why did you
9 have to complete nonmanagerial tasks as a store manager
10 at Rite Aid.

11 MR. SCOTT: Object to form.

12 THE WITNESS: With the budgets being cut on a
13 regular basis, the expectations were that all the store
14 operations still had to be completed, and as the
15 salaried employee, I had to -- because it didn't put any
16 extra hours onto our budget.

17 BY MS. SCOTT:

18 Q. And what would happen if the store operations
19 weren't completed as required by the district manager?

20 A. He would either call me, or when he came in the
21 store and saw that this end wasn't done or whatever --
22 well, good example. He came into my store one day, and
23 there were some items missing on the -- up front by the
24 cash register. You know, they put those little
25 compulsive thing for people to buy, and there were some

1 STATE OF CALIFORNIA)
2 COUNTY OF LOS ANGELES) SS.

3

4

5 I, CINDA RILEY, hereby certify under
6 penalty of perjury under the laws of the State of
7 California that the foregoing is true and correct.

8 Executed this _____ day of

9 _____, 2011, at

10 _____, California.

11

12

13

14

CINDA RILEY

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25

Exhibit CCC

Yatram Indergit, et al. v. Rite Aid Corporation, et al. 1:08-cv-09361-PGG-HBP
Kenneth Ruzat
July 14, 2011

Page 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

YATRAM INDERGIT, on behalf of himself
and others similarly situated,

Plaintiff,

- vs -

RITE AID CORPORATION, RITE AID OF
NEW YORK, INC., and FRANCIS OFFOR as
Aider & Abettor,

Defendants.

CIVIL ACTION NO. 1:08-cv-09361-
PGG-HBP

-----x

July 14, 2011

9:43 a.m.

DEPOSITION of KENNETH RUZAT, taken by
Defendants, pursuant to Fed.R.Civ.P. 30 and
agreement of counsel, held at the offices of EMG
New York, 250 Park Avenue, New York, New York
10177, before Janet Hamilton, a Registered
Professional Reporter and Notary Public of the
State of New York.

1 involves computers, anything that involves
2 electronic transactions.

3 A. But there isn't one if you're going
4 to handwrite it, is what you're saying.

5 Q. So the handwritten rain check form,
6 there's no --

7 A. It's not trackable. No.

8 Q. There's no, like, carbon. You
9 know. You can write out Rain Check, and
10 underneath there's a --

11 A. Oh, there's a yellow copy. But we
12 don't hold it. We know we needed it. So we
13 just ordered it and we'd throw it out.

14 Same with the one from the
15 register. We don't keep that extra copy. We
16 look at it and make sure you order more of it.

17 Q. The rain check form is in a book
18 with a yellow copy?

19 A. The rain check form has two copies;
20 a yellow and a white copy.

21 Q. And is the white the original, so
22 to speak?

23 A. Yes. That you give to the
24 customer.

25 K. Ruzat, 7/14/11

1 Q. And the yellow stays in your book?

2 A. Well, like I said, we didn't keep a
3 record of any book or anything.

4 Q. Was it Rite Aid's policy to keep a
5 record?

6 A. No.

7 Q. What was the purpose of the yellow
8 form?

9 A. The yellow form was to let you know
10 that next order you order it.

11 Q. How did you know that if you didn't
12 retain it?

13 A. I retained it in my brain to know
14 that item, that one particular item.

15 Q. And the store manager made the
16 orders for merchandise?

17 A. Not all the time.

18 Q. Sometimes?

19 A. Sometimes. Or the assistant
20 manager.

21 Q. Did anyone else have the authority
22 to order merchandise, other than the store
23 manager or the assistant store manager?

24 A. As far as ordering? You mean for

25 K. Ruzat, 7/14/11

1 the cycle count gun? That was the proper way to
2 do it.

3 Q. Tell me the proper way to do it.

4 A. That was supposed to be how you
5 would do it. You went back to the shelf and you
6 ordered it. You couldn't order more or less.
7 You had to get approval from the district
8 manager. You had to do cycle counts only.
9 That's how you came up with shortages, as far as
10 not having enough for the sale.

11 Q. Now, I thought you mentioned that
12 the yellow copy, if it was -- if the rain check
13 was written out on the paper book, was to remind
14 the store manager or the assistant store manager
15 to order more of that item. Is that correct?

16 A. Correct.

17 Q. So ordering took place in more than
18 one way. One, through the cycle gun. Is that
19 correct?

20 A. Correct.

21 Q. And was there a way to supplement
22 the order through the cycle gun?

23 A. Yes.

24 Q. And how did you do that?

25 K. Ruzat, 7/14/11

1 A. You could order it. There was a
2 screen on the cycle count gun or in the computer
3 where you would order supplies. Where you could
4 order supplies plus add in anything more. But
5 at one point DMs were telling you that you were
6 not allowed to do that anymore. You had to go
7 with whatever the count was on the shelf or get
8 his approval if you wanted to order extra of
9 anything; to keep inventories under control.

10 Q. When you say "order supplies," is
11 that different than the items that you ordered
12 to sell?

13 A. Correct.

14 Q. Supplies like what?

15 A. Paper bags.

16 Q. Oh. Paper bags.

17 A. Plastic bags, I mean. Bathroom
18 supplies. Cleaning supplies. Office supplies.

19 Q. Supplies that you needed to run the
20 business?

21 A. Yes.

22 Q. Rather than items that you needed
23 to sell?

24 A. Yes.

25 K. Ruzat, 7/14/11

1 Q. And when you ordered supplies,
2 there was a place where you could order
3 additional items to sell. Is that correct?

4 A. Yes.

5 Q. Who had the authority to order
6 supplies? The store manager, the assistant
7 store manager? Well, let me ask you. Did the
8 assistant store manager have the authority to
9 order supplies?

10 A. He did, if I asked him to order
11 them for that week.

12 Q. It was a duty that the store
13 manager had. But the store manager could
14 delegate that duty to the assistant store
15 manager. Is that correct?

16 A. Yes. Correct.

17 Q. Could the store manager delegate
18 that duty to the shift supervisor?

19 A. Yes.

20 Q. Could the store manager delegate
21 that duty to anyone else in the store?

22 A. No.

23 Q. Could the assistant manager
24 delegate that duty to the shift supervisor?

25 K. Ruzat, 7/14/11

1 associates?

2 A. I'm sorry. Can you repeat the
3 question?

4 Q. Certainly. I'll even withdraw that
5 question and I'll ask you this question.

6 And we're going to take lunch in --
7 would you like to take lunch now?

8 A. No. I'm good.

9 Q. Okay. As the store manager, when
10 you received the payroll budget, was the payroll
11 budget expressed in the number of hours that you
12 could allocate to the hourly associates?

13 A. What I can remember is you could
14 look on the computer and it would tell you in
15 dollars.

16 Q. Dollars. Thank you. Okay. Go
17 ahead.

18 A. Then we would have discussions with
19 the district manager. And he would say, well,
20 this is the total hours. Make sure you don't go
21 over this.

22 And we'd say, well, that doesn't
23 quite go with what's listed on the computer.

24 And he'd say that's what it is. I

25 K. Ruzat, 7/14/11

1 can't change it.

2 Q. Why wouldn't the expression of the
3 payroll budget in hours be consistent with the
4 amount shown in the computer for the payroll
5 budget in dollars?

6 MR. SINHA: Objection to form.

7 A. I don't know.

8 Q. (By Mr. Weiner) Well, what was the
9 difference between the hours and the dollars?

10 A. You would end up with more hours,
11 because the dollars were higher.

12 Q. If you used the dollars, you'd have
13 more hours?

14 A. Yes.

15 Q. So the district manager didn't
16 allow you to allocate all of the payroll budget?

17 A. No.

18 Q. Is that correct?

19 A. Correct.

20 Q. What would the reason for that be?
21 If you know.

22 MR. SINHA: Objection to form.

23 A. I don't know. I have no idea.

24 Q. (By Mr. Weiner) Can you recall

25 K. Ruzat, 7/14/11

1 what the dollars were of the payroll budget at
2 2548?

3 A. No.

4 Q. Can you recall the dollars of a
5 payroll budget at any store?

6 A. 2264. When we converted it, it was
7 under 290 hours to run, for the store.

8 Q. Who did the conversion from dollars
9 to hours?

10 A. It was on the chart. It would tell
11 you dollars, and then this is the hours.

12 Q. The computer did that?

13 A. Yes.

14 Q. Because doesn't the number of hours
15 depend upon the hourly rate?

16 A. Jim would also send out how many
17 hours you had used.

18 Q. So he calculated the hours?

19 A. He would tell you you had this many
20 hours. I would go back and keep telling him
21 it's getting less. It's getting less.

22 Q. I understand that. But it's just
23 that --

24 A. But it was on the computer. It did

25 K. Ruzat, 7/14/11

1 A. Yes.

2 Q. How long was a new hire teamed up
3 with a buddy?

4 A. Approximately three, four weeks.

5 Q. And what else did you do in the
6 hiring process?

7 A. I personally walked the store with
8 them. Showed them how things were. What the
9 signs meant. The labels. How the truck order
10 came in. Like I said, I reviewed the schedule
11 with them. How the pay period worked.
12 Introduced them to everyone on the staff,
13 including the pharmacy staff.

14 Q. How many times do you think you did
15 what you just described during the course of
16 your employment at Rite Aid?

17 A. I don't recall how many times.

18 Q. Was it more than ten?

19 A. Yes.

20 Q. Was it more than 20?

21 A. Yes.

22 Q. Oh. Was it more than 40?

23 A. Yes.

24 Q. Was it more than 60?

25 K. Ruzat, 7/14/11

1 A. Over 20-some years, I would think
2 so. I mean, not 20; 18. From 1987.

3 Q. And with regard to the other side
4 of that equation, what did you do to discipline
5 employees?

6 MR. SINHA: Objection to form.

7 A. Rite Aid had a form which you
8 filled out. The first one was oral. Second was
9 a write-up. I don't know exactly at this point,
10 it's been a while, how the actual write-ups went
11 before they were reviewed and fired. You had to
12 have the district manager's approval and human
13 resource manager's approval before you could
14 fire them. But there were several steps.

15 Because it was a union store. The union rep had
16 to -- the union steward had to be involved also.

17 Q. (By Mr. Weiner) Did the union
18 steward have to be involved for the oral
19 warning?

20 A. No.

21 Q. You could do that at any time?

22 A. Correct.

23 Q. What did you do as a store manager
24 if you saw somebody violating the policy? Did

25 K. Ruzat, 7/14/11

1 you initially -- you know. I'll just leave it
2 at that. What did you do if you saw somebody
3 violating the policy?

4 A. Well, if it was a theft or
5 something outright, I would be calling the
6 security manager.

7 Q. And then what?

8 A. Then he would come in and interview
9 the person.

10 Q. And then what?

11 A. Then we would discuss what the
12 interview was and go from there as far as the
13 write-up or the termination at that time.

14 Q. Theft is pretty serious, isn't it?

15 A. Yes.

16 Q. Did you have the authority to
17 orally warn employees on your own?

18 A. Yes.

19 Q. Did a union steward have to be
20 involved in a write-up?

21 A. No.

22 Q. You had the authority to do that on
23 your own?

24 A. Yes.

25 K. Ruzat, 7/14/11

1 A. No.

2 Q. Do you have any reconstructions of
3 the hours that you worked at this time?

4 A. Repeat the question.

5 Q. Have you prepared a written summary
6 of the hours that you worked?

7 A. No. No.

8 Q. Have you prepared a written
9 statement of your work at Rite Aid?

10 A. No.

11 Q. Did you bring any documents with
12 you to this deposition?

13 A. No.

14 Q. Did you review any documents in
15 preparation for this deposition?

16 A. No.

17 MR. SINHA: For the record, except
18 for the attorney-client work product.

19 Q. (By Mr. Weiner) Do you know
20 what --

21 A. Yes. I know what you mean there.

22 Q. Okay. Good.

23 A. I brought my itinerary. That's it.
24 How to get here.

25 K. Ruzat, 7/14/11

1 Q. Where did you come from, actually?

2 A. Philadelphia. Outside Philly.

3 Delaware County.

4 Q. When you were a store manager at

5 2548, how many hours did you work per week?

6 A. That would be an average of 61, 62

7 hours.

8 Q. Did that fluctuate?

9 A. Yes.

10 Q. What's the most number of hours you
11 ever worked at 2548?

12 A. Seventy-two hours.

13 Q. What's the least?

14 A. Forty-eight. Forty-seven,
15 forty-eight hours.

16 Q. And my question, as I think you
17 understood it, only pertains to those work weeks
18 when you were working the full week. I'm not
19 asking you about vacation weeks or weeks in
20 which you took certain days off because you were
21 sick or on another kind of leave or anything
22 like that.

23 A. Uh-hum. Yes.

24 Q. What were some of the factors that

25 K. Ruzat, 7/14/11

1 determined how many hours you worked as a
2 salaried store manager at 2264?

3 A. Staffing. Workload.

4 Q. Could you describe the effect
5 staffing had on the number of hours you worked?

6 A. Budget cuts. Call outs.

7 Q. Call outs are where an employee who
8 is scheduled to work calls out sick?

9 A. Yes.

10 Q. What did you do in those cases?
11 Did you try to get somebody else to come in and
12 cover that shift?

13 A. Yes, I did. But I could not get
14 anyone to come in.

15 Q. Did you go through the list of
16 people who worked at that store and ask them if
17 they could come in and cover the shift?

18 A. Yes.

19 Q. Did you have the authority to cover
20 that shift?

21 A. I had the authority to cover the
22 shift. Yes.

23 Q. I mean, you had the authority to
24 call someone in to cover the shift?

25 K. Ruzat, 7/14/11

1 A. Per week. Before the store opened,
2 while I was there?

3 Q. Okay. Yes. Please. That's a
4 clarification. I appreciate that.

5 A. Well over 80 hours.

6 Q. Eighty hours a week?

7 A. For the three weeks. First couple
8 weeks. Close to 80 hours.

9 Q. Each week?

10 A. For that three weeks.

11 Q. And how many hours a week did you
12 work after the store actually opened to the
13 general public?

14 A. I always averaged in the busier
15 stores 58 to 64, 62 hours.

16 Q. And was 1782 one of the busier
17 stores after it opened?

18 A. Yes. It picked up.

19 Q. Busier in terms of sales volume?

20 A. Sales volume, yes.

21 Q. Do you remember how many dollars a
22 week you were doing at the new store after it
23 opened?

24 A. When I left, it was doing close to

25 K. Ruzat, 7/14/11

1 \$30,000.

2 Q. Was that a profitable store?

3 MR. SINHA: Objection to form.

4 A. I couldn't tell you exactly.

5 Q. (By Mr. Weiner) As an assistant

6 manager, how many hours did you work at 731?

7 A. Fifty-six, fifty-seven hours.

8 Q. And did that vary from week to

9 week?

10 A. Yes.

11 Q. Based on staffing and workload?

12 A. Yes.

13 Q. And holiday?

14 A. Yes.

15 Q. And summer?

16 A. Yes. Summer vacations. That work

17 had to be covered.

18 Q. And weather effected the number of

19 hours that you worked in a week at well.

20 A. Weather?

21 Q. Weather.

22 A. No.

23 Q. No. That was not a factor?

24 A. No.

25 K. Ruzat, 7/14/11

1 Q. I am going to show you what has
2 been marked as Exhibit Number 1.

3 (Exhibit 1 marked for
4 identification.)

5 Q. (By Mr. Weiner) It's entitled Field
6 Performance Management Salary Appraisal Form.
7 It's a three-page document that, on the last
8 page, is dated July 22nd, 2008. Is that your
9 signature on the last page?

10 A. Yes, it is.

11 Q. And is that Lee Ennis' signature?
12 E-n-n-i-s?

13 A. Yes.

14 Q. He was your district manager at the
15 time?

16 MR. SINHA: If you know.

17 A. I don't recall him being district
18 manager for this store, for me.

19 Q. (By Mr. Weiner) Do you recall this
20 performance evaluation?

21 A. Yes. But I recall it for 2548.

22 Q. Was Lee Ennis your district manager
23 at 2548?

24 A. Yes.

25 K. Ruzat, 7/14/11

1 to 10:30, 11:00.

2 Q. And what percentage of the day was
3 that, can you say?

4 A. A quarter of the day, each day.

5 Q. How frequently -- did you do these
6 tasks every day?

7 A. Yes.

8 Q. And did you consider doing these
9 duties part of your regular duties?

10 A. Yes.

11 Q. And, to your knowledge, were these
12 duties part of what a manager at Rite Aid was
13 expected to do?

14 A. Yes.

15 Q. Did you feel that your performing
16 these duties effected how you were able to
17 manage the store?

18 A. Yes. With doing the duties, like
19 how to do -- like, I was unable to keep up with
20 planograms.

21 Q. Anything else?

22 A. Seasonal. Changing over the
23 seasonal aisle and the end caps for the monthly
24 changeover. Falling behind on CBTs.

25 K. Ruzat, 7/14/11

1 Q. Anything else?

2 A. Not right now.

3 Q. Did it effect your ability to
4 supervise your staff?

5 A. Yes. Because I was either in the
6 back room, cleaning the bathroom or the break
7 room, and leaving them alone up front by
8 themselves our outside doing the parking lot.

9 Q. And this would be for at least a
10 quarter of the day, you said?

11 A. Yes.

12 Q. And you worked as a store manager
13 at other companies besides Rite Aid?

14 A. Store manager? No.

15 Q. Okay. I'm going to ask you a
16 series of questions. Who made the final
17 decision regarding hiring staff at Rite Aid?

18 A. We were able to hire. We made the
19 final decision, unless their background check or
20 survey did not come out to what it should be.
21 And the human resource manager and the district
22 manager was involved.

23 Q. And was that true for all hires?
24 All positions?

25 K. Ruzat, 7/14/11

1 A. We only were able to hire cashiers
2 and shift supervisors.

3 Q. And "we," meaning as the store
4 manager?

5 A. Yes.

6 Q. And what about assistant store
7 managers? Who had the final decision regarding
8 those hires?

9 A. District manager.

10 Q. And -- okay. Who made the final
11 decision regarding firing staff?

12 A. That would be the human resource
13 manager and district manager.

14 Q. Who made the final decisions
15 regarding disciplining staff?

16 A. That would be the store manager.

17 Q. Was that true for all levels of
18 discipline?

19 A. What was the question again?

20 Q. Did the store manager have the
21 final decision in disciplining staff regarding
22 all types of discipline?

23 MR. WEINER: Objection as to form.

24 A. No.

25 K. Ruzat, 7/14/11

1 Q. (By Mr. Sinha) Can you describe --
2 can you describe what levels of discipline the
3 store manager was able to -- had a final
4 decision?

5 A. We had forms to fill out. And if
6 it detailed insubordination, lateness, there
7 were certain periods of time, steps, how many
8 times they did the act. And then they were, had
9 a final warning. Then it was turned over to the
10 district manager and human resource manager.

11 Q. Okay.

12 A. And discussed with their union rep.

13 Q. Were there any other types of
14 discipline that the district manager had a final
15 decision on?

16 A. If it was due to theft, he was
17 involved in that.

18 Q. Who made the final decision
19 regarding promotion of staff?

20 A. The district manager did the review
21 for shift supervisors.

22 Q. And who made the final decision
23 regarding evaluation of staff?

24 A. With the new review policy, we were

25 K. Ruzat, 7/14/11

1 doing the reviews; the store managers.

2 Q. And before the new review policy?

3 A. It was the district managers.

4 Q. And approximately when did the new
5 review policy go into effect?

6 A. Within the last two years, that I
7 can recall.

8 Q. Who made the final decision
9 regarding setting the overall payroll?

10 A. Rite Aid Corporation.

11 Q. Who made the final decision
12 regarding setting the budget for your store?

13 A. Rite Aid Corporation.

14 Q. Did you have any voice in changing
15 the budget?

16 A. We could put in a request for a
17 review of the payroll, as to why we feel we
18 needed more.

19 Q. And who made the final decision on
20 that?

21 A. Rite Aid Corporation.

22 Q. And who did you consider to be
23 ultimately responsible for profitability at your
24 store?

25 K. Ruzat, 7/14/11

1 A. Me.

2 Q. And did the district manager have
3 any role in setting -- in -- I'm sorry. Did
4 the -- strike that.

5 Did the district manager have any
6 role in being responsible for profitability at
7 your store?

8 A. Yes.

9 Q. And what role did he have or she
10 have?

11 A. Controlling what I could get fixed
12 in the store as far as whether it was a plumbing
13 problem. I'd have to go through him. Or having
14 the windows cleaned. How many times they picked
15 up the parking lot.

16 Q. Were you able to control the
17 profits at your store if you couldn't control
18 the payroll and the budget?

19 A. No.

20 Q. So isn't it true that you weren't
21 ultimately responsible for profitability at your
22 store?

23 A. No.

24 MR. WEINER: Objection as to form.

25 K. Ruzat, 7/14/11

1 You may answer.

2 Q. (By Mr. Sinha) I guess I'm trying
3 to clarify what your answer is.

4 A. Can you repeat the question?

5 Q. Sure. Did you consider yourself
6 ultimately responsible for profitability at your
7 store?

8 A. No.

9 Q. Did you feel you had autonomy at
10 your store? Autonomy to run your store?

11 A. No.

12 Q. And why not?

13 A. Most things had to be approved
14 through the district manager. When we had
15 conference calls, it was discussed to make sure
16 we send him an e-mail when things that we needed
17 done were ordered. If we needed -- not your
18 basic supplies, like bags and things like that.
19 But ordering hooks, things like that. Even
20 though we had a book for it, we had to have him
21 approve that.

22 Q. You said you trained managers at
23 various Rite Aid stores across the country. Is
24 that right?

25 K. Ruzat, 7/14/11

1 A. Yes.

2 Q. I think you mentioned California,
3 Louisiana, Maine, Pennsylvania. Is that right?

4 A. Yes.

5 Q. And did you also train in
6 Massachusetts and Mississippi?

7 A. Yes.

8 Q. Was there any difference in how you
9 trained a manager in any of those stores?

10 A. No.

11 Q. Did the same systems, policies,
12 procedures for training Rite Aid managers apply
13 to all the stores?

14 A. Yes.

15 Q. And the training manual that you
16 testified to earlier, was it the same training
17 manual used in training at all those stores?

18 A. At the Eckerd stores.

19 Q. And what about the other stores
20 that you trained for Rite Aid?

21 A. No. We did it just knowing how we
22 ran our store.

23 Q. Okay.

24 A. And we were told to follow how we

25 K. Ruzat, 7/14/11

July 14, 2011

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1 A C K N O W L E D G M E N T

2 *Pennsylvania*
3 STATE OF ~~NEW YORK~~)

4 : ss

5 COUNTY OF *Delaware*)

6

7 I, KENNETH RUZAT, hereby certify that
8 I have read the transcript of my testimony taken
9 under oath in my deposition of July 14, 2011;
10 that the foregoing transcript is a true,
11 complete, and correct record of my testimony;
12 and that the answers on the record as given by
13 me are true and correct.

14

15

16

17

18 Signed and subscribed to before me
19 this 25 day of August, 2011.

20

21

Leticia Matos
NOTARY PUBLIC

22

23

24

25

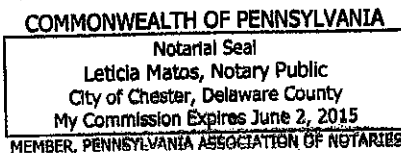


Exhibit DDD

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - X
 YATRAM INDERGIT, on behalf of :
 himself and others similarly :
 situated, :
 :
 Plaintiff, :
 :
 vs. : CIVIL ACTION
 : NO. 1:08-cv-
 : 09361-PGG-HBP
 RITE AID CORPORATION, RITE AID OF :
 NEW YORK, INC., and FRANCIS OFFOR :
 as Aider & Abettor, :
 :
 Defendants. :
 - - - - - X

July 11, 2011

Deposition of MOHAMED SAAB, taken pursuant to notice, held at the offices of Epstein Becker & Green, P.C., 250 Park Avenue, New York, New York, commencing at 10:00 a.m. before Jamie I. Moskowitz, a Registered Professional Reporter and Notary Public.

1 A Yes.

2 Q Did you work for any other stores
3 other than New Hyde Park, Auburndale, Valley Stream
4 or Jackson Heights for Eckerd or Rite Aid?

5 MS. REHMAN: Objection to form.

6 THE WITNESS: I worked for Eckerd.

7 BY MR. WEINER:

8 Q And then you worked for Rite Aid?

9 A Yes.

10 Q Are the stores at New Hyde Park and
11 Auburndale the only stores you worked at for Eckerd?

12 A No.

13 Q What other stores did you work at for
14 Eckerd?

15 A Winston Park.

16 Q Okay. What else?

17 A Elmont.

18 Q Elmont?

19 A Yes. Valley Stream.

20 Q Go ahead.

21 A That's all three stores for Eckerd.

22 Q Okay. Three stores for Eckerd and two
23 stores for Rite Aid, correct?

24 A Yes.

25 Q Valley Stream and Jackson Heights?

1 A Yes.

2 Q Was there a change in the way the
3 store was operated when Rite Aid bought it from
4 Eckerd?

5 A Not much.

6 Q Was there a change in the way the
7 store was operated when Eckerd bought it from
8 Genovese?

9 A Yes.

10 Q Is that the change from the full
11 autonomy that you had described earlier to the
12 limited autonomy that you described when working for
13 Eckerd?

14 MS. REHMAN: Objection to form.

15 THE WITNESS: Yes.

16 BY MR. WEINER:

17 Q When you said there was not much
18 change in the way you operated the store when
19 Rite Aid acquired the store from Eckerd, what did
20 you mean?

21 A I think I told you before when Eckerd
22 bought Genovese, but I'm going to tell you again.
23 When Rite Aid bought Eckerd, it's almost identical
24 policy. It's always corporate policy. They made
25 the decision for me.

1 Q With regard to merchandising?

2 A Yes.

3 Q With regard to ordering?

4 A Some ordering.

5 Q When you say "some ordering," what do
6 you mean?

7 A I order for the shelves. And
8 corporate, they decide what to put on sale and how
9 much to send to the store.

10 Q Now, at Eckerd, did you have a
11 co-store manager in your store, co-manager?

12 A Yes.

13 Q Did you have an assistant manager?

14 A No.

15 Q How many hourly employees did you
16 have?

17 A Which store?

18 Q At Williston Park, how many hourly
19 employees did you have?

20 A Maybe 15. Around 15.

21 Q And at Williston Park, did you have a
22 co-manager?

23 A We don't call them co-manager. It's a
24 salaried assistant manager.

25 Q How many salaried assistant managers

1 did you have at Williston Park?

2 A One.

3 Q And were you a salaried store manager?

4 A Yes.

5 Q The 15 hourly employees that you
6 described, do you call those associates?

7 A Yes.

8 Q Does that include workers in the
9 pharmacy?

10 A The cashier in the pharmacy, pharmacy
11 tech.

12 Q And was the Williston Park store a
13 unionized store?

14 A No.

15 Q At Elmont, you were the salaried store
16 manager; is that right?

17 A Yes.

18 Q Did you have a salaried assistant
19 manager there?

20 A Yes.

21 Q Did you have more than one salaried
22 assistant manager?

23 A No.

24 Q How many associates did you have?

25 Those are the hourly employees.

1 A Northern Boulevard and 145th Street,
2 150.

3 Q That's where all of Rite Aid's
4 district managers worked?

5 MS. REHMAN: Objection to form.

6 THE WITNESS: I don't know.

7 BY MR. WEINER:

8 Q Do you know how many district managers
9 worked at Rite Aid?

10 A No.

11 Q When you worked for Eckerd, how many
12 district managers did you work for?

13 A Two.

14 Q Tony and Roy?

15 A Yes.

16 Q Now, why did you leave Rite Aid?

17 A I had a disagreement with the district
18 manager.

19 Q Disagreement with Mr.?

20 A Abu Baker.

21 Q Abu Baker.

22 What was the disagreement about?

23 A About payroll, about store layout, you
24 know.

25 Q This was a disagreement that you had

1 with Mr. Abu Baker that you did not have with Bob
2 Tancs?

3 A No.

4 Q Did you get along pretty well with Bob
5 Tancs?

6 A I think so.

7 Q What was different about Abu Baker
8 from Bob Tancs?

9 A Well, Abu Baker have -- he wants to
10 run the store, he wants to be on the top of
11 everything.

12 Q Could you give me four examples?

13 A Four examples?

14 Q I'll take three, but if you can give
15 me four, that will be even better.

16 A If I want to make changes for end
17 caps, for displays, I can't do it. I cannot add any
18 money for payroll. Restrict all the ordering.

19 Q One more, that's all I ask. One more
20 example of how Abu Baker --

21 A Just everyday operation. He ran the
22 store like everyday operation.

23 Q But Mr. Bob Tancs wasn't like that; is
24 that correct?

25 A He had a different style. They all

1 did their job, the same job, maybe different style.

2 Q Each of the district managers had a
3 different management style?

4 A Different individuals, but they have
5 the same policy and the same direction from
6 corporate.

7 Q Did you see the directions the
8 district managers received from corporate?

9 A I used to get the book every month.

10 Q Which book is that?

11 A Rite Aid called it a store map.

12 Q What was the store map?

13 A It contains four weeks for the month,
14 how you merchandise your store, where to allocate
15 the merchandise, where to put the signs, how you
16 hang the signs.

17 Q Bob Tancs didn't tell you what your
18 end-cap displays should be, did he?

19 MS. REHMAN: Objection to form.

20 THE WITNESS: I think I explained to
21 you, it comes with a map, a store map.

22 BY MR. WEINER:

23 Q Well, you were explaining to me the
24 reason that you had a disagreement with Mr. Abu
25 Baker, that you did not have with Mr. Bob Tancs.

1 Q And did you go to that meeting the
2 next day?

3 A Yes.

4 Q How long did that meeting last?

5 A About six hours.

6 Q Six hours.

7 And who did most of the talking?

8 A He did.

9 Q What did he say?

10 A He talked about Rite Aid.

11 Q Did he discuss differences that would
12 take place in the operation of the store once it had
13 been purchased by Rite Aid?

14 A Yes.

15 Q Do you recall what differences he
16 discussed?

17 A Some of it. I don't recall the whole
18 thing. I mean, I don't recall six hours of talking.

19 Q And I'm not going to ask you to relate
20 six hours of talking.

21 A Right. Some things stick in my mind,
22 yes.

23 Q Those are the only ones that I'm going
24 to ask you to describe at this time, whatever sticks
25 in your mind.

1 A Well, basically, he said: I'm your
2 new district manager. I run the show. I make the
3 decision for you guys. I want to know everything
4 that goes on in the store.

5 Q How many people were at the meeting?

6 MS. REHMAN: Objection to form.

7 THE WITNESS: Maybe 12, 15.

8 BY MR. WEINER:

9 Q Was everyone in the meeting a store
10 manager except Ravi?

11 A Yes.

12 Q Did you know the other store managers
13 who were there?

14 A Not all of them.

15 Q Did you say anything at the meeting?

16 A No.

17 Q Did Ravi tell you what to expect in
18 the next four to six weeks, when the transition was
19 taking place -- I'm sorry, four to ten weeks, I
20 believe you said?

21 MS. REHMAN: Objection to form.

22 BY MR. WEINER:

23 Q Did you say four to ten weeks?

24 A No. You asked me how many people they
25 sent to the store.

1 Q You said four to ten?

2 A Four to ten.

3 Q And it was about a four-week period?

4 A Some stores. Depends on the size of
5 the store.

6 Q You just said that the transition may
7 take different lengths of time depending on the size
8 of the store; is that correct?

9 A Well, are you asking me about Valley
10 Stream store?

11 Q I don't know.

12 A The stores. If you ask me about my
13 store, I know my store.

14 Q I asked you how long the transition
15 took, and you answered it depended on the size of
16 the store and different things. Now I'm asking what
17 you meant by that.

18 A Well, you don't ask me if my store.
19 Am I talking about my store or another store?

20 Q I'm talking about your --

21 A No, you don't specify. My store, I
22 told you, took about four weeks. I already answered
23 that question.

24 Q Mr. Saab, I'm going to ask you to
25 listen to this testimony you just gave me, and if

1 A When I saw Bob Tancs, he used to come
2 to the store. He said: Please, let's change this,
3 let's do this. Always very nice. And the other
4 two, they come and they just change it now. It's a
5 different treatment.

6 MS. REHMAN: You may continue. I just
7 have to make a call. But you can continue
8 without me.

9 BY MR. WEINER:

10 Q When you worked at Eckerd, were you
11 given a labor budget?

12 A Yes.

13 Q And did you have a labor budget at
14 Rite Aid?

15 A Yes.

16 Q Who gave you the labor budget at
17 Rite Aid?

18 A The district manager.

19 Q So Ravi gave you a labor budget?

20 A Yes.

21 Q And Bob Tancs gave you a labor budget?

22 A Yes.

23 Q And Abu Baker gave you a labor budget?

24 A Yes.

25 Q What was the labor budget at Valley

1 Stream?

2 A I would say about 7,500.

3 Q Did that change?

4 A Yes.

5 Q Could you describe the changes in your
6 labor budget at Valley Stream, from what to what?

7 A It went down to 6,500.

8 Q Started out at 7,500 and was reduced
9 to 6,500?

10 A Yes.

11 Q Did it ever go back up again?

12 A No.

13 Q Do you recall the amount of the labor
14 budget at Valley Stream that Eckerd had set?

15 A Between 8,000, 8500. 8,000 to 8500.

16 Q When Ravi took over as Rite Aid's
17 district manager, did he reduce the amount of your
18 labor budget?

19 A Yes.

20 Q How long after he took over did he
21 reduce the amount of your labor budget?

22 A I don't remember exactly.

23 Q Was it a couple of days, a couple of
24 weeks, a couple of months, couple of years?

25 A No.

1 Q Tell me.

2 A I would say maybe a couple of months.

3 Q You told me business also declined?

4 A Yes.

5 MS. REHMAN: Objection to the form.

6 BY MR. WEINER:

7 Q By about a million and a half dollars
8 a year in the transition of Eckerd to Rite Aid; is
9 that correct?

10 A Let me explain this. The store itself
11 did not go down. All the money we lost in business,
12 in the pharmacy.

13 Q Did the front-end portion of the
14 Valley Stream store revenue remain the same?

15 A Almost.

16 Q From Eckerd to Rite Aid, almost
17 remained the same?

18 A Yes.

19 Q A little bit down or a little bit up
20 or just about the same?

21 A Fluctuates.

22 Q Fluctuated?

23 A From week to week.

24 Q Why did the pharmacy sales drop off so
25 dramatically?

1 MS. REHMAN: Objection to form.

2 BY MR. WEINER:

3 Q And within that labor budget, were you
4 able to solve that problem any way you decided to,
5 as long as you did not exceed the amount of revenue
6 they allocated to you?

7 MS. REHMAN: Objection to form.

8 THE WITNESS: I tried my best.

9 BY MR. WEINER:

10 Q What were some of your strategies for
11 solving that problem?

12 A Cut the employees' hours.

13 Q What else?

14 A That's the only thing. I can't cut
15 the rent.

16 Q Well, rent was a different budget,
17 wasn't it?

18 A Yes.

19 Q Did the rent come out of any budgets
20 you were given?

21 A I never saw a budget.

22 Q You never saw a rent budget?

23 A Not with Rite Aid.

24 Q You saw the labor budget?

25 A I saw the number.

1 Q And that was a weekly number?

2 A Yes.

3 Q Did that number change from week to
4 week?

5 A Maybe every two weeks, three weeks.

6 Q Do you know why that number changed
7 every two, three weeks?

8 A I don't know.

9 Q Were there seasonal factors that would
10 influence the change of the labor budget?

11 A I don't know.

12 Q Did you notice that in periods of high
13 sales volume, that there would be additional labor
14 revenue for you to use, like holidays?

15 A Yes, around Christmas.

16 Q Were the sales at the Valley Stream
17 store seasonal in nature?

18 A No.

19 Q It was the same in the winter as it
20 was in the summer?

21 A Almost.

22 Q Did merchandise change from the winter
23 to the summer?

24 A Yes.

25 Q And did the merchandise change from

1 the spring to the fall?

2 A Yes.

3 Q Did your weekly sales volume change
4 from winter to summer?

5 A Not too much.

6 Q Or from spring to fall, did the sales
7 volume stay about the same?

8 A Almost.

9 Q If you wanted to hire associates
10 part-time and have employees in the store just
11 during the times when you had the highest sales
12 volume, could you do that?

13 A Not on my own.

14 Q Say that again?

15 A Not on my own. I have to call the
16 district manager.

17 Q And what did you say to the district
18 manager and what did the district manager say to
19 you?

20 A I need to hire a part-timer or two
21 part-timer, and most of the time he said: No, don't
22 hire. Give somebody more hours for the two weeks
23 holiday and then you go back to normal. Or some
24 other stores, if they had extra, he'll send one.

25 Q If you could allocate the labor budget

1 in a way that covered your store with part-timers
2 rather than full-timers, or rather than overtime, is
3 that something that the district manager approved?

4 MS. REHMAN: Objection to form.

5 THE WITNESS: I don't know.

6 BY MR. WEINER:

7 Q Did you make those recommendations?

8 A No.

9 Q What recommendations did you make to
10 use your labor budget and run the store?

11 A The only method I did, I cut payroll.
12 If somebody is working 30 hours, I cut them down to
13 20. Somebody working 25, cut them down to 20, to
14 18, so I could meet my budget.

15 Q You didn't use much overtime, did you?

16 A No.

17 Q And why is that?

18 A It was not allowed.

19 Q Well, it wouldn't be a good use of
20 your labor budget, would it?

21 MS. REHMAN: Objection.

22 BY MR. WEINER:

23 Q Overtime?

24 A I can't give enough hours -- I can't
25 give overtime. There's not enough hours.

1 Q If you needed 120 hours of hourly
2 work, it would make more sense for you to have three
3 hourly associates working 40 hours each rather than
4 two hourly associates working 60 hours each,
5 wouldn't it?

6 MS. REHMAN: Objection to form.

7 THE WITNESS: That's not my decision.

8 BY MR. WEINER:

9 Q You were given the labor budget,
10 weren't you?

11 A Yes.

12 Q And you were told to run the store
13 with that labor budget, weren't you?

14 A Yes.

15 Q So you could run the store with
16 part-timers or full-timers? That was your decision,
17 wasn't it?

18 A No. I inherit the store. They gave
19 me a store already staffed full-timers and
20 part-timers.

21 Q Wait. We're talking Valley Stream
22 here?

23 A No. Jackson Heights.

24 Q Well, let's do one store at a time.
25 The Valley Stream store, you were the store manager

1 when Rite Aid purchased it from Eckerd?

2 A Yes.

3 Q So you had that store staffed and you
4 were operating that store for Eckerd; isn't that
5 correct?

6 A Yes.

7 Q And you described a four-week period
8 in which Rite Aid sent in troops and made a
9 transition; is that correct?

10 MS. REHMAN: Objection to form.

11 THE WITNESS: Yes.

12 BY MR. WEINER:

13 Q Let's talk about that four-week
14 period. Describe what happened during that period.

15 A I did not pay anybody that came to
16 Rite Aid. I did not pay their salaries.

17 Q The transition team that Rite Aid sent
18 to the Valley Stream store after Rite Aid purchased
19 it from Eckerd did not come out of your labor
20 budget; is that correct?

21 A Yes.

22 Q Your labor budget continued to pay for
23 the staff of associates that you had before Rite Aid
24 bought the store; isn't that correct?

25 A Yes.

1 sweep.

2 Q If you had seven employees, hourly
3 associates, and three or four were cashiers, what
4 would the other three or four be doing?

5 A One part-timer, he would be on the
6 floor like I explained to you. When we had the
7 photo, we used to have one in photo. And we used to
8 have one called cosmetician, in charge of beauty
9 section.

10 Q Was the photo employee full-time
11 designated to the photo lab?

12 A Yes.

13 Q And if that person wasn't busy in the
14 photo lab, would they also be helping out on the
15 floor?

16 A They would be cashier if I need them.

17 Q And cosmetician, is that a full-time
18 hourly associate?

19 A It was a full-time, yes.

20 Q And did you tell the full-time hourly
21 cosmetician that there were no longer any hours for
22 her?

23 A Yes.

24 MS. KANE: Object to the form.

25

1 BY MR. WEINER:

2 Q And what did the cosmetician say to
3 you?

4 A She left.

5 Q Do you know where she went?

6 A I don't know.

7 Q On Wednesday, who was in charge of the
8 store?

9 A Assistant manager, salaried.

10 Q That's at Valley Stream or is it at
11 Jackson Heights?

12 A Both.

13 Q When you weren't in the store, the
14 assistant store manager was in charge; is that
15 correct? The salaried assistant store manager was
16 in charge; is that correct?

17 A Yes.

18 Q On Friday -- on Thursday, what time
19 did you leave the store?

20 A About 7:00, 6:00.

21 Q On Friday, what time did you leave the
22 store?

23 A Ten p.m.

24 Q From 7:00 a.m. until 10:00 p.m.?

25 A No. Twelve o'clock, 12 noon.

1 Q On Friday. Okay.

2 And the store stayed open after
3 10:00 p.m., didn't it?

4 A Yes.

5 Q Because it was a 24-hour store, right?

6 A Yes.

7 Q And Saturday, what time did you leave?

8 A About 5:30, 6:00.

9 Q On Sunday, what time did you leave?

10 A I would stay about three or four
11 hours.

12 Q Some Sundays you didn't have to go in
13 at all; isn't that correct?

14 A Sometimes I don't have to.

15 Q If you went in on a Sunday, what
16 reason did you go in?

17 A I have to close payroll.

18 Q What does that involve?

19 A Check the payroll for the last two
20 weeks. We call the pay period.

21 Q And what did you say, close the pay
22 period?

23 A Yeah, close payroll for the period.

24 Q What does that involve?

25 A I have to check the payroll for the

1 two weeks, make sure everything is punched in and
2 punched out, all the employees are in, all the sick
3 days are in, all the vacation days are in, and I
4 submit it to human resource, to corporate.

5 Q How long did that process take?

6 A If you have a lot of employees, it can
7 take awhile.

8 Q At Valley Stream, did you have a lot
9 of employees?

10 A With the pharmacy, about 22.

11 Q Were you responsible for the payroll
12 for the pharmacy employees as well?

13 A Just to check, make sure all the ins
14 and outs. If there is something missing, I will
15 call the pharmacy manager.

16 Q And did you do that?

17 A Yes.

18 Q Did the pharmacy manager work on
19 Sunday?

20 A Yes.

21 Q Did it take about three or four hours
22 on Sunday to close the payroll?

23 A No.

24 Q How long did it take to close the
25 payroll?

1 Q If she's short, what do you do?

2 A We write her up.

3 Q What kinds of things do you write in
4 the write-up?

5 A Cashier, Mrs. Smith, on June or
6 July 11, for \$4.55. She sign it.

7 Q And do you sign it, too?

8 A Yes.

9 Q And does it go anywhere else from
10 there?

11 A It goes to her file.

12 Q You don't have to send that on to the
13 district manager, do you?

14 A After three write-up, yes, we have to
15 send it to the district manager.

16 Q Three write-ups for the same thing?

17 A Three write-ups.

18 Q Three write-ups in a year or three
19 write-ups in your career?

20 A In a calendar year.

21 Q In one calendar year.

22 So on January 1st, all the write-ups
23 that might have been in the file before get --

24 A That's with Genovese. I don't know
25 about Eckerd or Rite Aid.

1 Q Let me see here. Who did you sue in
2 this lawsuit? It was Rite Aid, wasn't it? That's
3 what I was told.

4 So, let's do this: When I'm asking
5 you about Valley Stream, I'm going to ask you about
6 your experience there as a store manager during the
7 time you worked for Rite Aid, okay?

8 A Okay.

9 Q Thank you.

10 A You're welcome.

11 Q I should have made that clear before
12 now, I'm quite sure.

13 You were explaining to me write-ups at
14 Valley Stream. Is what you told me about write-ups
15 true for the time you worked as a store manager for
16 Rite Aid at Valley Stream?

17 A Yes.

18 Q Thank you.

19 Now, let's just get to the annual
20 basis of there being three write-ups before having
21 to notify the district manager. Was that true at
22 Rite Aid?

23 A Shortage over \$50.

24 Q Over 50?

25 A Over 50, okay? You have to call the

1 district manager right away. He has to make a
2 decision if that cashier stay or she gets fired.

3 Q Did that ever happen while you were
4 the store manager at Valley Stream?

5 A No.

6 Q Did that ever happen while you were a
7 store manager at Jackson Heights?

8 A I don't remember.

9 Q You don't remember whether someone was
10 short \$50 or more as a cashier at Jackson Heights?

11 A No, I don't remember.

12 Q Is it possible somebody was short more
13 than \$50 and you just don't recall?

14 A Maybe.

15 Q Otherwise, if a cashier is short \$1.25
16 on January 5th, on July 11th, and that's all in the
17 calendar year, do those write-ups get thrown out and
18 the cashier gets to start over in the next calendar
19 year?

20 MS. REHMAN: Objection to form.

21 THE WITNESS: I don't know.

22 BY MR. WEINER:

23 Q At Rite Aid, you're not sure?

24 A I don't know.

25 Q Did you ever have a cashier that had

1 more than three write-ups in one calendar year while
2 were you employed by Rite Aid?

3 A No.

4 Q Did you ever have an employee that you
5 wrote up for being late?

6 A Yes.

7 Q How many employees did you write up
8 for being late?

9 A Maybe one, one or two.

10 Q One or two, did you say?

11 A One or two, yes.

12 Q Okay. And do you recall whether that
13 was at Valley Stream or at Jackson Heights?

14 A Both stores.

15 Q One each, or one or two each?

16 A I don't remember the numbers. Maybe
17 one in Jackson Heights and maybe two in Valley
18 Stream.

19 Q Thank you.

20 Can you give me any of the details
21 that you remember about the employee at Jackson
22 Heights that came in late?

23 A Can you rephrase the question, please?

24 Q Yes. Do you recall how late the
25 employee was at Jackson Heights that you wrote up?

1 A Yes.

2 Q How late?

3 A Sometimes 20 minutes, sometimes half
4 an hour.

5 Q So, it wasn't just one event; that was
6 someone that was late frequently?

7 A A couple of times.

8 Q And did you give the person an oral
9 warning before you wrote them up?

10 MS. REHMAN: Objection to form.

11 THE WITNESS: I talked to them.

12 BY MR. WEINER:

13 Q What did you say to them?

14 A "Don't be late. Try to be on time."

15 Q And what did they say to you?

16 A "I'll try."

17 Q Did they explain any reason why they
18 were coming to work late?

19 A Transportation, the bus, the train, I
20 don't find a baby-sitter for my son.

21 Q And how many times were they late
22 before you wrote them up?

23 A Two. Twice.

24 Q About 30 minutes each?

25 A No.

1 Q Twenty minutes each?

2 A Maybe 20; 15 minutes, 20.

3 Q And after you wrote them up, did they
4 have any latenesses after that?

5 A Not really, no.

6 Q So, that discipline was handled
7 entirely at the store-level basis; you didn't have
8 to get involvement from anyone at the district
9 level; is that correct?

10 MS. REHMAN: Objection to form.

11 THE WITNESS: For that incident,
12 because it stopped. But if it's continued, I
13 have to call the district manager.

14 BY MR. WEINER:

15 Q But for that incident, you were able
16 to handle that within your own authority at the
17 store; is that correct?

18 MS. REHMAN: Objection to form.

19 THE WITNESS: Yes.

20 BY MR. WEINER:

21 Q How about the two at Valley Stream,
22 can you recall how many times the one person -- were
23 there two individuals that you can think of?

24 A I think two, but I don't recall the
25 time or...

1 Q Do you recall any of the details?

2 A No.

3 Q Do you recall whether you counseled
4 them and told them not to be late before you wrote
5 them up?

6 A Yes.

7 Q And do you recall how many times they
8 were late before you wrote them up?

9 A Maybe once or twice.

10 Q Do you recall how many minutes they
11 were late?

12 A No.

13 Q Do you recall whether, after you wrote
14 them up, they stopped being late?

15 A One of them left, I think.

16 Q And the other?

17 A Was fine.

18 Q Do you remember either of their names?

19 A No.

20 Q Do you remember what positions they
21 held?

22 A Cashier, floor guys.

23 Q And, at Jackson Heights, do you recall
24 the position the individual held that you wrote up?

25 A Stock boy.

1 A Not the human resource manager.

2 Q How often did you see the human
3 resources manager?

4 A When I was in Jackson Heights, one
5 time.

6 Q One time. Only one time?

7 A Yes.

8 Q Did you retain any material that you
9 were given as a store manager by Rite Aid, any
10 training material?

11 A No.

12 Q Did you ever receive a performance
13 evaluation in writing yourself? Were you ever the
14 subject of a performance evaluation?

15 A Yes.

16 Q And was that in writing?

17 A Yes.

18 Q And did you retain that performance
19 evaluation?

20 A No.

21 Q Do you recall what the performance
22 evaluation was, whether it was positive or negative?

23 A It was positive.

24 Q How many performance evaluations from
25 Rite Aid did you receive?

1 A One.

2 Q And who performed that?

3 A Ravi.

4 (Whereupon, a discussion was held off
5 the record.)

6 EXAMINATION BY

7 MS. REHMAN:

8 Q Can you describe what your managerial
9 duties for Genovese were when you were a store
10 manager for Genovese?

11 A When I was with Genovese, my duty was
12 make sure store runs right, make sure meet my
13 budget, and do whatever I can to increase sales,
14 increase margin.

15 Q Is that all?

16 A Most of it, yes.

17 Q And what were your managerial duties
18 when you were store manager for Rite Aid?

19 A Most of my time with Rite Aid I spent
20 on the floor doing work which was supposed to be
21 done by hourly workers, like stocking shelves,
22 bringing boxes from the basement, run the photo lab.

23 Q Are there any other daily
24 nonmanagerial duties that you were required to do as
25 a store manager for Rite Aid on a daily basis, aside

1 from those that you just mentioned?

2 A Whatever the store need, I have to do,
3 I did it.

4 Q Why did you not assign those tasks or
5 duties to hourly associates?

6 A Because I don't have them.

7 Q Why don't you have them?

8 A I don't have enough money from my
9 budget.

10 Q And can you just describe the
11 difference between being a manager for Genovese and
12 being a manager for Rite Aid, a store manager. What
13 was the difference, in your opinion?

14 A My opinion, manager for Genovese, you
15 are really a store manager, truly a store manager.
16 They left you alone, you did your job, you perform,
17 and most of their stores were making money.

18 With Rite Aid, I feel like I am a
19 robot. Somebody control me with a remote control.
20 I have no say in any decision in the store regarding
21 payroll, regarding where the merchandise go.
22 Everything was done for me.

23 Q And you said that you worked at Valley
24 Stream and Jackson Heights; is that correct?

25 A Yes.

1 Q Valley Stream was a non-union store?

2 A When I was there, it was non-union.

3 Q And when you were a store manager at
4 Jackson Heights, it was a union store; is that
5 correct?

6 A Yes.

7 Q And was there any difference in the
8 duties that you were required to do in the Jackson
9 Heights store and in the Valley Stream store?

10 A No.

11 Q Were you allowed to or could you
12 promote an employee without approval from the
13 district manager?

14 A No.

15 Q Could you hire an employee without
16 approval from your district manager?

17 A I can hire, but they have to pass a
18 corporate test. So, really, it's not my decision.

19 Q And could you fire an hourly associate
20 without approval from your DM?

21 A No.

22 Q You had said earlier in your -- in the
23 deposition, you had said that you would come in on
24 Sunday sometimes to do payroll; is that correct?

25 A Yes.

1 Q Why would you not come in any other
2 day to do payroll?

3 A Because I'm there every day, and
4 Sunday I have to submit the payroll.

5 MS. REHMAN: I think that's all.

6 EXAMINATION BY

7 MR. WEINER:

8 Q You did say that you had the
9 discretion at Valley Stream to recommend a raise in
10 the range of 2 to 4 percent, didn't you?

11 A Yes.

12 Q And that was different from the duties
13 that you had at Jackson Heights, wasn't it?

14 MS. REHMAN: Objection to form.

15 THE WITNESS: That was not a union
16 store. We explained this already.

17 BY MR. WEINER:

18 Q I know.

19 So there was a difference between a
20 union store and a non-union store, wasn't there?

21 A Yes.

22 MS. REHMAN: Objection to form.

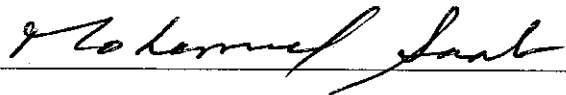
23 BY MR. WEINER:

24 Q Now, when your lawyer just asked you
25 that same question, you said there was no

C E R T I F I C A T E

STATE OF New York :COUNTY/CITY OF Queens :

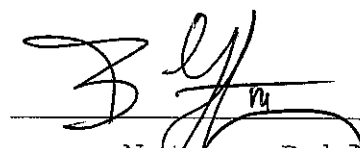
Before me, this day, personally appeared
MOHAMED SAAB, who, being duly sworn, states that the
foregoing transcript of his/her Deposition, taken in
the matter, on the date, and at the time and place
set out on the title page hereof, constitutes a true
and accurate transcript of said deposition.



MOHAMED SAAB

SUBSCRIBED and SWORN to before me this 04th
day of August, 2011, in the
jurisdiction aforesaid.

02/20/15
My Commission Expires


Notary Public

BENADITO FITANZO III
Notary Public - State of New York
NO. 01FI6161197
Qualified in Nassau County
My Commission Expires 02/20/15

DEPOSITION ERRATA SHEET

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RE

FILE NO.

CASE CAPTION: Yatram Indergit vs. Rite Aid

DEPONENT: MOHAMED SAAB

DEPOSITION DATE: July 11,

To the Reporter:

I have read the entire transcript of my Deposition taken in the captioned matter or the same has been read to me. I request for the following changes be entered upon the record for the reasons indicated. I have signed my name to the Errata Sheet and the appropriate Certificate and authorize you to attach both to the original transcript.

SIGNATURE: Mohamed Saab

MOHAMED SAAB

DATE: 8/4/11

Exhibit EEE

YATRAM INDERGIT, et al. v. RITE AID CORPORATION, et al
Jose Santos on 10/19/2011

Page 1

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 -----X

4 YATRAM INDERGIT, on behalf of
5 himself and others similarly
6 situated,

7 Plaintiff,

8 - vs - Civil Action No.
9 1:08-CV-09361-PGG-HBP

10 RITE AID CORPORATION, RITE AID OF
11 NEW YORK, INC., and FRANCIS OFFOR
12 as Aider & Abettor,

13 Defendants.

14 -----X

15 October 19, 2011

16 10:12 a.m.

17 Deposition of JOSE R. SANTOS, taken by
18 Defendants, pursuant to Notice, at the offices
19 of Epstein Becker & Green, P.C., 250 Park
20 Avenue, New York, New York, before Linda D.
21 Danelczyk, a Registered Professional Reporter,
22 Certified Court Reporter, and Notary Public of
23 the States of New York and New Jersey.
24
25

1 A. Did I ask my store manager?

2 Q. Yes.

3 A. Can you repeat that, please?

4 Q. Yes.

5 Did you ask your store manager to
6 do the same things you did with the guns, the
7 scanning guns regarding ordering merchandise?

8 MS. REHMAN: Objection to form.

9 A. I'm not understanding because you
10 referring to which store managers?

11 Q. Well, when -- when I asked you
12 about the use of the scanning guns, my
13 understanding is you explained to me that you
14 used the guns to order merchandise.

15 A. Yes.

16 Q. And that was when you were the
17 store manager; is that correct?

18 A. Yeah.

19 Q. And when you were the store
20 manager, did you ever delegate that task to your
21 assistant manager?

22 A. Oh, to the assistant -- okay, you
23 were saying store manager.

24 Q. No, when you were the store
25 manager --

1 A. Okay.

2 Q. -- did you tell the assistant
3 store manager to do the job of ordering
4 merchandise using the scanning gun?

5 A. Um, not really.

6 Because, um, I -- I used to do
7 order most of the time. I used to do the order.

8 However, if I was not there, the
9 assistant manager will grab the gun and do the
10 order because I don't -- I don't order.

11 There's certain days to do the
12 order before the order comes. So in between
13 those days, if the order is not done, the person
14 that -- we had two days, I mean this is -- this
15 procedure come from corporate that we need to
16 order by certain day. If we order after that,
17 the merchandise will not come.

18 So if I was -- if I was off on the
19 day of the order, and then the other person
20 that's there will do the order. Either the
21 shift supervisor or the assistant manager.

22 Q. Were there certain days of the
23 week that the ordering was done? Or did it
24 depend on when the merchandise was needed?

25 A. No. No.

1 Yeah, there is a specific day that
2 the truck comes, which -- which I don't have no
3 power over that. It's corporate.

4 And the days that we need to make
5 the order is also corporate that makes the
6 decision is specific days to order.

7 If you miss that time, then the
8 computer will generate an order and bring it to
9 you based on what the computer thinks you have.
10 We don't have control over that.

11 Q. So when you place an order for
12 merchandise, that overrides the automatic order
13 that the computer sends you?

14 MS. REHMAN: Objection to form.

15 Q. Is that correct?

16 A. Can you repeat that again, please?

17 Q. Yes.

18 If you do not place an order,
19 merchandise will be sent to you automatically;
20 is that correct?

21 A. Some merchandise.

22 It may not be exactly what you
23 need.

24 Q. And that's why you place an order.

25 A. Not really.

1 Because to my knowledge in retail,
2 placing an order is not a good -- a good way
3 because it's better to keep a good -- a good --
4 a good count of the merchandise that you have,
5 unless the computer, you know, kind of do -- do
6 their job and things like that.

7 But our -- our district managers,
8 they also say No, no, no, no, no, order, order,
9 order.

10 And, you know, we have to do
11 what -- what the -- you know, higher levels tell
12 us to do.

13 Q. Do you know why the district
14 managers told you to order?

15 A. I don't know.

16 They have different understanding
17 of things. I don't know what is on their head.

18 Q. Well, sometimes the computer's
19 list of inventory that you have in the store
20 isn't accurate; isn't that true?

21 A. Yes.

22 Q. And that's why you perform the
23 cycle count?

24 MS. REHMAN: Objection to form.

25 A. What you mean?

1 Q. Is that why you perform the cycle
2 count?

3 A. Why?

4 Q. To determine whether the inventory
5 in the store matches the list in the computer?

6 A. Yes.

7 Q. And if the physical count of the
8 merchandise in the store is different than what
9 the computer has, you'll have to make up that
10 difference in your order; won't you?

11 A. No.

12 Q. For what reason do you place an
13 order for merchandise?

14 A. To fill up the -- the merchandise
15 that's needed.

16 Q. The computer wouldn't do that
17 automatically?

18 A. No, not always.

19 Q. How do you know what's needed?

20 A. Well, the district manager, if he
21 comes and sees a section light, by light I mean
22 there's only one or two items or there's holes,
23 you know, they always tell us, the district
24 manager, order, order, order. Manually order
25 everything, you know, never let a section go

1 A. Can you -- I don't understand the
2 question.

3 Q. Did the labor budget you received
4 as a store manager stay the same or did it vary?

5 A. It varied.

6 Q. Did it go up at Christmas?

7 A. I don't remember.

8 Q. Do you remember any reasons why it
9 went up or down?

10 A. I remember as time passed by, and
11 the budget kept shrinking.

12 Q. You had to make due with less
13 labor dollars to spend; is that correct?

14 A. Yes.

15 Q. When you received labor dollars --
16 let me ask you this:

17 Do you remember what your labor
18 budget was at 4261?

19 A. I don't remember.

20 Q. Do you remember what your labor
21 budget was at 4887 in 2009?

22 A. No.

23 The only one I -- I remember is
24 4889.

25 Q. In 2009?

1 A. Yeah.

2 Q. And what was it then?

3 A. It was about -- between 6,000 to
4 6,500.

5 And I remember --

6 Q. For the week?

7 A. Yes.

8 And I remember that when I came

9 back now in 2011, I -- the store manager pull up

10 the screen, and they were giving her 4,000 --

11 about 4,000 and four or 500. 4,500. Something

12 like that. A little less, a little more. I

13 can't remember, but it was under 4,000.

14 So, you know, it -- every time

15 they kept shrinking.

16 Q. When you were the store manager
17 and you were given the labor budget of \$6,500,
18 were you able to allocate that the way you
19 thought would best serve the business of the
20 store?

21 MS. REHMAN: Objection to the
22 form.

23 A. No.

24 Q. Were you able to -- well, tell me
25 why you said, "No"?

1 A. Because that budget, that is a
2 difficult store that opens at 7 a.m. closes at
3 midnight, and the staff -- it wasn't the budget
4 that I had at that time, it wasn't enough to --
5 to cover every -- everything that corporate
6 wants us to do. It wasn't enough.

7 So I ended up always working very
8 often. You know, I was there always, but very
9 often I ended up working a lot of extra to
10 finish the job that was not done.

11 Q. Now, from the labor budget that
12 paid for cashiers and stock clerks and shift
13 supervisors and assistant store managers; is
14 that correct?

15 A. And store manager.

16 Q. And store manager, okay.

17 A. Correct.

18 Q. Okay.

19 So that 6,500 was to pay for
20 hourly cashiers, whether they were part time or
21 full time, right?

22 A. Yes.

23 Q. And hourly stock clerks full time
24 or part time, right?

25 A. Yes.

1 in, you know, at night, they have to be packed
2 out overnight.

3 So if I had somebody working
4 after, they -- they packed out, they worked the
5 overnight packing out the truck.

6 Even if -- even if I wanted to
7 close, I mean even if I -- yeah, if I wanted to
8 close, I cannot make those people that working
9 the overnight, you know, do an extra shift or --
10 you know, it's a little bit complicated.

11 Sometimes I -- I could not choose,
12 you know, I got to go also by what other
13 managers have, you know.

14 Q. And did you decide which days the
15 other managers opened the store and which days
16 other managers closed the store?

17 A. Yeah, sometimes. Most of the
18 time.

19 Q. And did you decide what shifts the
20 shift supervisor worked?

21 A. Yes.

22 Q. And did you decide which shifts
23 the stock clerks worked?

24 A. Yes.

25 Q. Did you decide --

1 A. Well, I'm sorry. That's not a
2 hundred percent accurately.

3 Sometimes I could not decide on
4 what time an employee works, because it is based
5 on seniority.

6 So even if I needed certain people
7 in the afternoon rather than during the day,
8 there's nothing I can do. They have to keep the
9 schedule because they have the most seniority
10 and they get to kind of keep their schedule that
11 they have.

12 Q. Was that a union store?

13 A. Every store that I worked is union
14 store.

15 Q. And is the seniority because of
16 working with a union?

17 MS. REHMAN: Objection to the
18 form.

19 A. I don't know why was that. I
20 don't know if it's New York law or union law. I
21 don't know.

22 Q. And apart from the seniority, did
23 you decide the shifts the stock clerks were
24 assigned to work?

25 A. Yes.

1 Q. And the same with the cashiers?

2 A. Yes.

3 Q. Were some cashiers better workers
4 than others?

5 A. I don't believe anybody is better
6 than another.

7 Q. You don't believe any worker is
8 better than another worker?

9 A. No.

10 Q. You don't believe some workers
11 have more energy or some workers are more
12 careful in what they do or that some workers are
13 more productive than others?

14 MS. REHMAN: Objection to the
15 form.

16 A. Not -- not really because -- not
17 really, I don't believe that.

18 Q. Why not?

19 A. Because an employee who might be
20 good only the register and fast on the register
21 may not be as good packing out boxes and totes.

22 Another one really good packing
23 out boxes and totes may not be the -- as
24 efficient on the cash register and vice versa.

25 So I can't, I never judge on

1 Q. To the best of your ability?

2 A. Like I told you not, you know, I
3 would love to -- to do it that way. But because
4 of the seniority and -- and factors like that, I
5 really couldn't too much. Although I tried to,
6 you know.

7 Q. And that -- you allocated the
8 labor budget to the employees at 4889 and 4887
9 and 4261; is that right?

10 MS. REHMAN: Objection to form.

11 A. The question was too long.

12 Q. Sorry.

13 A. Yeah.

14 Q. Three stores; 4261, 4887, 4889.

15 You just described how you
16 scheduled employees and allocated the labor
17 budget at 4889.

18 Did you do the same kind of thing
19 in allocating the labor budget to the employees
20 who worked in the store at 4887?

21 MS. REHMAN: Objection to the
22 form.

23 A. If you mean creating the schedule,
24 yeah, I did the schedule.

25 Q. And did you do the same at 4261?

1 A. Correct.

2 Q. 4261, approximately how many shift
3 supervisors did you have?

4 A. It varies from time.

5 I had one and then I had two.

6 Q. Did you most often have one or
7 two?

8 A. I don't remember how often I was
9 with just one. But, yeah, I don't remember.

10 Q. Okay.

11 A. I don't know if it was about half.
12 Half and half was the beginning. Half the
13 beginning one, and the other half with two.

14 But I'm not really sure.

15 Q. Did you interview applicants for
16 the shift supervisor position when you hired the
17 second one?

18 MS. REHMAN: Objection to the
19 form.

20 A. I don't hire.

21 Q. I understand.

22 When the second one was hired, did
23 you interview any applicants.?

24 A. No. The decision was all my -- my
25 district manager.

1 He was -- the second shift
2 supervisor, he was an employee within my own
3 store. And he asked me like who you think is a
4 good, you know, for -- for, you know, for the
5 position. And then I said, well, my team is
6 pretty good. And he said, well, tell me about
7 somebody that never calls out and things like
8 that.

9 I said, well, I have -- I have a
10 guy that almost, almost never called out, and I
11 pointed out to him and then, you know, sometimes
12 he'll pass by the store and see how he was
13 doing, and then he offered him the position
14 and -- to be a shift supervisor.

15 Q. The district manager asked you who
16 you recommended to be promoted from an hourly
17 associate to a shift supervisor; is that right?

18 MS. REHMAN: Objection to form.

19 A. The district manager.

20 Q. Did the district manager ask you
21 who you recommended to be promoted?

22 A. Not really.

23 He asked me -- he asked me who did
24 I think was good. That never called out and
25 who -- who probably will be good for the

1 A. You didn't ask me.

2 Q. I didn't ask you, that's true.

3 Well, let me ask you this:

4 Can you identify all of the
5 positions that were paid by the labor budget?

6 A. It was the stock, cashier, shift
7 supervisor, assistant store manager.

8 But I'm not sure on the security.
9 Like my mind blank. I don't remember.

10 Q. Okay.

11 Was there a security guard at 4887
12 in 2009?

13 A. 4887? Yes.

14 Q. Was that security guard full time?

15 A. I don't remember.

16 Q. Was there a security guard at
17 4261?

18 You just told me yes.

19 Was there -- you told me that's
20 where the -- that's where you broke your thumb,
21 right?

22 A. Yes.

23 Q. At 4889, was there a security
24 guard?

25 A. I don't remember if that store had

1 a -- a security guard.

2 Yes. Yes.

3 Q. Now, I'm going to ask you about
4 the number of hours that you worked in a week,
5 not during the time that you were paid hourly,
6 the hourly basis of pay is not the focus of my
7 question.

8 When you were a salaried store
9 manager at 4261 in 2008 and 2009, what were the
10 average number of hours you worked a week?

11 A. It varied. I don't -- I don't
12 remember.

13 Q. Do you remember what the highest
14 number of hours per week was?

15 A. The highest that I once worked, it
16 will be hard to tell, because there was a day
17 that I remember the district manager had
18 complained, I don't remember if it was Lenny or
19 Mike, probably Mike, they had complained
20 about -- about us having too much Halloween
21 merchandise in the basement and -- and there was
22 a -- there was a CEO coming.

23 Q. CEO?

24 A. Yeah, Mary Sammons.

25 Q. M-A-R-Y?

1 A. Mary Sammons.

2 Q. Mary?

3 A. Yes.

4 And he had complained about having
5 all that stuff and, you know, he says, you know,
6 get rid of that and make sure you -- you set up
7 everything up to the seasonal aisle.

8 Q. Up to the seasonal aisle?

9 A. Yeah, to bring up and make sure --
10 I mean, it was so much work and so little bit of
11 time, and we didn't have the manpower to do it.

12 And I remember me and my assistant
13 manager, we worked -- I remember I came in at
14 7 a.m., and next day at 7 a.m. I was still on
15 the store as well as my assistant manager, and
16 we ended up leaving in the afternoon.

17 We worked way over 30 hours.

18 Q. Straight?

19 A. Straight without going home.
20 Without, you know, not even brushing our teeth.

21 I remember that.

22 Q. Who was the assistant manager you
23 worked with?

24 A. His name was Leon Kendall.

25 Q. Do you remember when this took

1 place?

2 A. I don't remember exactly.

3 But I know the season was

4 Halloween.

5 Q. Was that at 4261?

6 A. Yes, sir.

7 Q. So it could have been October of

8 2008?

9 A. Probably, but I don't remember
10 exactly.

11 We get the merchandise before,
12 long before we get the season. But I don't
13 remember the day.

14 Q. Do you remember Mary Sammons
15 coming to visit the store?

16 A. I remember the person that came
17 was the president of the -- of the company.

18 Q. Do you remember what that person's
19 name was?

20 A. He's the current CEO. His name is
21 John Stanley.

22 Q. J-O-H-N is John?

23 A. Yeah.

24 Q. Stanley, S-T-A-N-L-E-Y?

25 A. Yeah. I believe, yeah. Stanley.

1 John Stanley.

2 Q. Hmm.

3 Did you meet John Stanley?

4 A. Yes.

5 Q. Did you speak to him?

6 A. Yes, different occasions.

7 Q. Not just this once?

8 A. No, not just this once.

9 Q. What did John Stanley say about
10 the store when he visited in approximately
11 October of 2008?

12 A. He will walk the store and
13 basement and say, "Good job."

14 Q. He did; didn't he?

15 A. Yeah.

16 Q. What did the district manager say?

17 A. The district manager very often
18 they -- they didn't say much.

19 Q. But on this occasion when the
20 president of Rite Aid came to your store, walked
21 the store, went to the basement and said, "Good
22 job," what did the district manager say?

23 A. I don't remember. Probably he say
24 the same thing, but I don't remember.

25 Q. Other than that, which was a

1 pretty unique instance; wasn't it?

2 MS. REHMAN: Objection to form.

3 Q. You didn't work 30 hours straight
4 on any other occasion; did you?

5 A. There were other occasions we -- I
6 cannot remember specifically.

7 I remember this incident
8 specifically because of his visit.

9 Q. Uh-huh.

10 A. But that's why I'm able to give
11 you details.

12 But I don't remember other
13 specifics, but there were times that I -- that I
14 work long hours.

15 Q. And what was the least amount of
16 hours you ever worked in a week as a salaried
17 store manager?

18 A. The least?
19 The least I'll say -- I don't
20 remember exactly. But we -- I don't know.

21 I don't think I did less than 60
22 something hours.

23 Q. That was your least? As the
24 salaried store manager?

25 A. But I don't -- I don't remember

1 certainly.

2 They said the -- it's 50 hours we
3 are supposed to, you know, that they said, but
4 what I heard, but not that I also seen
5 everything in any place. They supposed to be
6 about 50 minimum. But I always ended up doing
7 more, more than that.

8 Q. The salary that you received was
9 for all the hours that you worked, whether it
10 was 50, 60, 70, or more; isn't that right?

11 MS. REHMAN: Objection to form.

12 A. What?

13 Q. Did the salary you receive change
14 if you worked more hours?

15 A. I wish.

16 Q. Well, I'm going to ask you to say
17 yes or no to this question.

18 A. No.

19 Q. Okay.

20 So the salary that you received is
21 the salary you were paid for all the hours that
22 you worked?

23 A. Correct.

24 MS. REHMAN: Objection to form.

25 Q. Whether few or many; is that

1 right?

2 A. It was the same salary.

3 Q. Do you remember working with a
4 assistant store manager by the name of Zakiya
5 Millar?

6 A. Yes.

7 Q. You do?

8 A. Yes.

9 Q. Did you ever write her up?

10 A. I don't remember.

11 Q. Well, let me ask you:

12 As a store manager, did you assign
13 tasks to the workers in the store?

14 A. Yes.

15 Q. And did you give workers lists of
16 tasks to accomplish?

17 A. No list. I will tell them.

18 Q. Directly?

19 A. Yeah.

20 Q. Orally?

21 A. Orally.

22 Q. Not in writing?

23 A. Not that I remember.

24 Actually, sometimes I left notes
25 to the managers to do things. But not very

1 said I can't work as many hours as you scheduled
2 me the following week, would you cut their hours
3 and give those hours to someone else?

4 A. Probably. I don't remember people
5 not wanting hours.

6 Q. You remember people wanting hours?

7 A. No, I said I don't remember --
8 yeah, I don't remember people not wanting hours.

9 But I don't remember specifics,
10 you know.

11 Q. But I think you used the example
12 of someone who said, Can I have that day off?
13 And you'd say, Yes.

14 A. I used it as an example, yeah.
15 But I don't remember specific.
16 You know, I cannot -- it's not that -- that it
17 happened. You know, I just use an example.

18 Q. Of something that might have
19 happened?

20 A. Probably.

21 Q. Did you ever receive questions
22 from customers?

23 A. Yes.

24 Q. What kind of questions?

25 A. What time do you close?

1 Are you going to receive -- I
2 purchased the last item that was remaining, are
3 you going to receive more?

4 Can you -- do you carry this
5 product? Can you order it for me?

6 Things like that.

7 Q. And what did you say to a customer
8 who said, Can you order this for me?

9 A. I will -- I will ask the customer
10 if I could take a look at the product and then I
11 will check to see if we carry the product first.

12 And if we -- if we carry it, the
13 first thing I'll do is I'll tell them to wait
14 for me for -- for a minute so while I go
15 downstairs to the basement to look for the
16 product and maybe if we are stocked.

17 If we don't have the product, then
18 I cannot order it, and I will explain to the
19 customer that it's not up to me to bring
20 merchandise that the company doesn't carry, it's
21 corporate the ones that's in charge of putting
22 in the merchandise that we sell. It's not -- I
23 don't have the power. I can only order what the
24 merchandise that the company, corporate already
25 put on the planogram.

1 Q. And were there times that you were
2 out of an item that an employee -- I'm sorry,
3 that a customer wanted to buy and the customer
4 asked you to order it for the next delivery from
5 the truck?

6 A. Yes, there were times.

7 Q. And did you do that?

8 A. Yes.

9 It depends. Sometimes I will try
10 to get the item. If the customer was in need of
11 the item, I will try to -- to call other stores
12 to see -- to try to locate it and tell the
13 customer, you know, they have it in this place.

14 Q. You'd call other stores to see if
15 the item the customer wanted to buy was
16 available in other stores?

17 A. Correct.

18 Q. Did you ever receive complaints
19 from customers?

20 A. Yes.

21 Q. What kinds of things did customers
22 complain about?

23 A. Well, sometimes they will
24 complain, for example, if they cannot find an
25 item and they will complain.

1 A. Yes.

2 Q. "The primary purpose of this
3 position is to manage the operation of an
4 individual store in an efficient manner while
5 maximizing sales margin and profitability."

6 Do you agree that's a primary
7 purpose of the position of store manager?

8 A. Can you repeat the question,
9 please?

10 Q. Is the first sentence an accurate
11 description of the primary purpose of a store
12 manager?

13 A. I don't -- I guess. But
14 partially.

15 Q. Well, from your experience, is it
16 an accurate description of the position of store
17 manager as you performed that job?

18 A. Well, I perform, you know, a
19 profitability -- in a profitability store.

20 Q. You performed in a profitable
21 store?

22 A. Yes.

23 Q. And did you think it was one of
24 your primary purposes to manage the operation of
25 that store to keep it profitable?

1 A. Well, that is always -- that is
2 most of the time a concern to keep it
3 profitable.

4 However, they are more concerned
5 in following the corporate policies and
6 directions that come from the corporate, because
7 like a district manager don't care much if he's
8 making money, the store.

9 But then if they see that a
10 planogram is not done or that the basement is
11 not looking the way they want it to, and things
12 like that, you know, so it's like -- it's about
13 everything.

14 It's not -- it's not just, you
15 know, profitability in maximizing sales. It's
16 about -- it's about doing, implementing and, you
17 know, and doing every work that corporate sends,
18 you know.

19 Corporate sends a planogram, it
20 needs to be done. Corporate sends a price
21 change to be done, it needs to be done.

22 Regardless if the store is making
23 huge profits, if those are not done, then, you
24 know, you get fired.

25 Q. The second sentence, do you agree

1 that it's:

2 "A primary purpose of the position
3 of store manager to enforce company policies and
4 procedures while ensuring directives and all
5 daily activities, deliver against the expected
6 operating standards, merchandising, programs and
7 budgeted financial targets"?

8 MS. REHMAN: Objection to the
9 form.

10 A. I don't understand what they mean
11 by delivery against.

12 Q. I think it means, um,
13 accomplishing.

14 A. I will read it once more.

15 Q. I think if we used the term
16 "accomplishing" the sentence would read:

17 Enforce company policies and
18 procedures while ensuring directives and all
19 daily activities -- maybe achieve the expected
20 operating standards.

21 MS. REHMAN: Same objection.

22 Q. And my question is:

23 Do you agree that that is a -- an
24 accurate description of a primary duty of a
25 store manager?

1 A. Well, I will have to say that I
2 disagree.

3 Q. Okay. How come?

4 A. Because I mean that is their
5 primary -- you know, I don't know who wrote
6 this -- this -- corporate probably.

7 So if they -- that will be
8 probably their understanding of what it needs to
9 be or what a store manager is.

10 It probably defer, you know, like
11 I told you, we follow -- I don't remember ever
12 seeing this.

13 Q. You never saw that job description
14 before today?

15 A. No.

16 Q. Okay. So I'm glad I was able to
17 teach something to you.

18 A. Yeah, so it's like that might be
19 theirs, but in the store it's a different thing,
20 you know.

21 Q. What's different in the store from
22 this description?

23 A. I mean it's about following -- I'm
24 not really managing. You know, I'm there, of
25 course, I'm the store manager, but I'm not

1 really managing, I'm doing what district
2 managers or -- or, you know, loss prevention
3 and/or corporate tells to us to do, you know.

4 Okay, this could be a right
5 description, but you see it says merchandising,
6 programming. I don't have control over

7 merchandising, programming. I don't choose what
8 goes on the shelf. They chose for me.

9 Budget. Financial targets? I
10 don't chose the financial target and the budget.
11 They choose it for me.

12 And they not in the store a
13 hundred percent of the time. They don't see
14 that I'm not able to -- that I live with my
15 mother and I haven't seen her in two days
16 because I haven't been home, I've been working
17 and getting things done, because I cannot pay
18 people to help me get the stuff done on a timely
19 manner, this way I could have some time and, you
20 know, work the time that I'm supposed to work
21 and then go home, but, no, I have to stay extra
22 to finish the work.

23 So this is what I'm trying to tell
24 you, you know, this is their expectation.

25 Q. Right.

1 Their expectation is that the
2 store manager enforces company policies and
3 procedures regarding merchandising, programming
4 and budgeted financial targets.

5 Do you feel that the store
6 manager's primary duty was to enforce company
7 policies in the store?

8 MS. REHMAN: Objection to form.

9 A. I feel it was a priority of doing
10 what they told us to do, you know.

11 We don't -- we don't chose what
12 to...

13 Q. Do you agree that a primary
14 purpose of the position of store manager is to
15 promote and drive customer service?

16 A. Absolutely.

17 Q. Is the frequent independent
18 judgment essential?

19 MS. REHMAN: Objection to the
20 form.

21 A. It should be. Even though our
22 judgment is not of much good, because my
23 judgment could be, hey, this planogram I will
24 think is not a good way, but I don't have a
25 power over that.

1 I could say, hey, I need -- I need
2 more budget for this store, and I think I could
3 make it even more productively, but I don't have
4 a power over that.

5 I could say this store could even
6 open a little later, because there's nobody at
7 this time, or it could close earlier or close
8 later, depending on the area. If it's not that
9 busy on that extra hour, let's cut that hour, I
10 don't have the power over that.

11 I could say, hey, the store closes
12 at 8, but even at 8 it's still very busy, let's
13 keep it open regularly ever day until 9 or 10,
14 but I don't have a power over that.

15 So, you know, frequent independent
16 judgment are essential. One could say, yeah,
17 but depending on what? On what situation? I
18 could say, yes.

19 I mean, your judgment, for
20 example, you're asking me questions, your
21 judgment is essential, your frequent judgment is
22 essential right now, you're asking me questions.

23 What about if your employee gave
24 you a list of questions to ask me. How good is
25 your judgment essential if you're asking me what

1 your colleagues told me to ask me and you're not
2 able to ask your own questions.

3 So, you know, that's how we have
4 the hands tied.

5 Q. Is the store manager required to
6 perform all tasks in a safe manner consistent
7 with corporate policies and state and federal
8 laws?

9 A. Yes.

10 Q. And then we have nine points. I'm
11 going to ask you the same kind of question:

12 Do you agree that these are the
13 essential duties and responsibilities of the
14 store manager?

15 Number 1, responsible for opening
16 and closing the store and maintaining proper
17 accountability for cash handling and company
18 banking.

19 MS. REHMAN: Objection to form.

20 Q. Do you agree that's an essential
21 duty and responsibility of the store manager?

22 A. I'll have to disagree.

23 Q. And why?

24 A. It says opening and closing. You
25 know, some stores is open from 7 a.m. to

1 Looking for outdates.

2 It included arranging the
3 overstocked merchandise in the basement.

4 And then a couple of times a week,
5 bringing it up and packing it out again on the
6 things that were empty.

7 It included facing the store.

8 Sweeping the street outside in the
9 morning so we don't get a ticket.

10 Taking out garbage.

11 Among other things that I cannot
12 think of right now.

13 Q. Okay. The tasks that you just
14 listed, did you do them every single day?

15 And I can go by --

16 A. Some of them.

17 Q. Which were the ones that you did
18 every day?

19 A. Register. I did the register.

20 Deposits.

21 Approvals.

22 Damages. We will to try to do it
23 every day, although it was not possible
24 sometimes.

25 Q. Why was it not possible?

1 A. There was not enough people and
2 too many tasks, so it's not possible to do those
3 things.

4 Facing.

5 Sweeping.

6 Q. What about taking out the garbage?

7 A. Oh, I didn't mention that.

8 Taking out the garbage also, yes,
9 every day.

10 I mean take -- cleaning the, you
11 know, the bins and, you know, putting the
12 garbage in the back.

13 Q. Did you assign your hourly
14 employees to take out the garbage?

15 A. Sometimes. And sometimes I did it
16 myself when there was not enough people.

17 Q. Did you stock shelves?

18 A. Yes.

19 Q. So when you were stocking shelves,
20 would you be able to see all the employees in
21 your store to supervise them?

22 A. No. No, because I'm stocking the
23 shelves.

24 You know, when I'm stocking the
25 shelves and doing a task, I mean, you know, I

1 got finish what I'm doing before I can go check
2 on something else.

3 So it's very difficult to -- to
4 keep an eye on to supervise while I'm -- while
5 I'm stocking a shelf or doing something like
6 that.

7 Q. Where are the cash registers in
8 your stores located?

9 A. The store is in the front.

10 Q. So if you were working on a cash
11 register in the front of the store, could you
12 see what your employees in the back of the store
13 were doing?

14 A. No. No, I couldn't. I couldn't
15 see what they were doing.

16 I mean usually, you know, I would
17 only stop what I was doing, which was necessary
18 to be done, I will only stop to do it when a
19 customer requested my help, I will stop and --
20 and help them.

21 But normally I had no control.
22 You know, I needed to do -- to do the work that
23 I was doing and it's hard to supervise
24 everybody.

25 Q. Every Rite Aid that you worked in

1 was in New York, correct?

2 A. Yes.

3 New York as the state, because I
4 worked in the Bronx and Manhattan.

5 Q. Okay. And when it snowed in New
6 York, did you have the ability to hire someone
7 to shovel the street?

8 A. I wish.

9 No.

10 Q. Who did the shoveling?

11 A. Well, the shoveling, we had to do
12 the shoveling ourselves.

13 Sometimes I had an employee, if I
14 had the manpower, I have them do it.

15 If it was busy or things like
16 that, I will go there myself and shovel and go
17 inside the store and then go out and shovel.

18 We used to put salt, but it wasn't
19 that effective.

20 And when we used to take the
21 trucks at night, that was the real problem,
22 because the snow is already kind of stuck in
23 there and we had to shovel our way in order for
24 truck to unload the merchandise.

25 Q. And did you complain to your

1 district manager that you needed help shoveling?

2 A. Yeah, but, you know, it was
3 something -- it is something that he will even
4 make fun of. You know, like what? You
5 cannot -- you cannot shovel a little snow? You
6 want like...

7 There's a couple of DMs that were
8 a little funny. You know, they will be
9 sarcastic, you know. What you want me to hire a
10 company to shovel for your store?

11 And, you know, I mean ...

12 But they were convincing, you
13 know. At one point, you know, you sit down and
14 think, Hey, I mean it's true, you know, they
15 don't have the money, but they do have the
16 money.

17 Q. Do you believe you were able to
18 fully supervise your employees while engaging in
19 shoveling the front of the sidewalk of the
20 store, or taking out the garbage, or working the
21 cash register, or stocking the shelves?

22 Do you feel when you were doing
23 though duties were you able to fully supervise
24 your store?

25 MR. WEINER: Objection as to form.

1 A. Not really.

2 Q. Why not?

3 A. Because if I'm shoveling outside
4 the store, I'm not inside -- I'm not even inside
5 the store.

6 If I'm packing out something in
7 the back, I cannot see what's happening on the
8 other side of the store. I cannot supervise the
9 store while I'm doing something.

10 Q. Earlier in the day you had
11 mentioned a cut in the payroll budget, in the
12 labor budget.

13 Do you recall that testimony?

14 A. I said payroll cut many times.
15 Can you...

16 Q. Do you recall -- was there a cut
17 in payroll during your time --

18 A. Oh, yes.

19 Q. -- when you were a store manager
20 for Rite Aid?

21 It's okay.

22 A. Yes.

23 Q. And did the cut in payroll and the
24 hours affect your ability to staff your store?

25 A. Yes.

1 Q. Did the cut in payroll hours
2 affect the job duties that you were required to
3 perform?

4 A. Definitely, yes.

5 Q. How so?

6 A. Because, um, I believe that if I
7 had more -- more budget to hire more people, we
8 will be able to get things done on the timely
9 manner that the company wants it done.

10 And -- and, you know, I will be
11 able to delegate responsibilities to different
12 people.

13 But if I only have a budget to --
14 to have people only on registers on busy stores,
15 guess what, either I be on register or I go on
16 the floor and do the job.

17 Q. Who do you believe was ultimately
18 responsible for the profitability of your store
19 while you worked as a store manager for Rite
20 Aid?

21 A. I'll say -- I'll say people from
22 corporate who makes all the decisions.

23 Q. Do you believe you had autonomy or
24 authority to run your store?

25 A. Well, not really because of the

1 things that I just pointed out.

2 It is the company that's giving us
3 budget, that giving us planograms, telling us
4 what to do. We cannot, you know. Anything we
5 say is not taken into consideration. As far as
6 running the business.

7 Like I explained before, I might
8 need more budget. I might need a store to close
9 later or earlier. You know, different changes.

10 But a normal manager will take the
11 decision, and Rite Aid was not able to make
12 those decisions as a store manager.

13 Q. Could you decide -- strike that.

14 Could you order whatever you
15 thought -- whatever merchandise you believed
16 that the store needed?

17 A. It depends if we talking about
18 quantities that the company already carried or
19 if we talking about different products.

20 Like, for example, like I
21 explained before. A product that the company
22 doesn't carry, even if a million customers told
23 me to bring it in the store, I wouldn't be able
24 to do it.

25 I could order merchandise. But

1 from the planner that is already set. Not --
2 not anything that I could think of that would
3 sell better, no, I cannot make that decision.

4 Q. When you worked as a store manager
5 for Rite Aid, how often was it that you hired an
6 assistant manager also working with you on your
7 shift?

8 A. Can you repeat that?

9 Q. While you worked as a store
10 manager for Rite Aid, how often was it that you
11 and an assistant store manager worked the same
12 shift?

13 A. I don't remember. It happened,
14 but I don't remember how, how often.

15 Q. It was often that it happened?

16 A. It depends. Sometimes it varies
17 by store, you know. It depends.

18 Q. Did you train employees?

19 A. Yes.

20 Q. And when you were training
21 employees, did you create your own procedures on
22 how to train them?

23 A. No. Everything is set.

24 I mean the -- the register has the
25 procedure how to do different things. You know.

1 Q. How frequently did you work at the
2 photo lab?

3 A. Well, basically, the photo lab is
4 a machine, a kiosk machine and they come to
5 print the photos and they ask for help, Oh, can
6 you help me print the photos? Whenever a
7 customer needed help, it happened often, you
8 know, in the store that somebody needed help.

9 Either printing out pictures or --
10 or sending -- or sending prints to be print at
11 another location. You know, sometimes they want
12 larger picture that the machine doesn't do it,
13 so we put them on an envelope and send it -- and
14 send it. And so we have to help that customer
15 with the questions.

16 Q. Do you know of any store manager
17 working for Rite Aid or who worked for Rite Aid
18 who was paid hourly?

19 A. Store manager?

20 Q. A store manager.

21 A. No.

22 Q. While you worked as a store
23 manager for Rite Aid, who had the final say on
24 hiring staff?

25 A. Can you repeat that? I'm sorry.

1 Q. Sure.

2 When you worked as a store manager
3 for Rite Aid, who had the final say on hiring
4 staff in your store?

5 A. That depends.

6 Q. On what?

7 A. It depends if -- from the people
8 that I already have, if somebody resigns, I'll
9 have the final say. I will -- I will hire
10 somebody to fill in.

11 But the final, the real final say
12 will be the people who set the budget. Because
13 if I have more budget, I will hire more people.

14 But, you know, it wasn't -- it was
15 not up to me. I could not give myself more
16 budget to hire more people.

17 Q. Were you involved in setting the
18 budget of your store?

19 A. Oh, no.

20 Q. Did you ever recommend a change to
21 the budget of your store?

22 A. All the time, yes.

23 Q. Was your recommendation ever
24 accepted?

25 A. No.

1 Q. Who would you make the
2 recommendation to?

3 A. My district manager.

4 Q. Did you ever have any say in
5 setting payroll for the store?

6 A. In setting payroll?

7 Q. Payroll budget for the store.

8 A. That wouldn't be the same thing?

9 Q. Is it the same thing?

10 A. Yeah.

11 The payroll budget is what we get
12 to distribute on the -- on the employees.

13 But, no, we don't have any -- any
14 say in those decisions.

15 Q. In terms of terminating staff, who
16 had the final say regarding termination in your
17 store?

18 A. District manager. Loss prevention
19 manager. And human resource manager.

20 MS. REHMAN: I have no further
21 questions.

22 MR. WEINER: I just have a couple.

23 EXAMINATION (CONTINUED)

24 BY MR. WEINER:

25 Q. Earlier we talked about

1 multitasking where if you're stocking a shelf
2 and a customer comes to you and asks a question,
3 I believe you testified that you could answer
4 the customer's question and also continue
5 stocking shelves; is that right?

6 MS. REHMAN: Objection to form.

7 A. No. That wouldn't be right.

8 You asked me if -- or probably I
9 didn't express myself correctly. It could be
10 but...

11 You asked me if I was stocking
12 shelves and a customer asked me a question,
13 would I help them. And I told you, of course, I
14 will help the customer.

15 And then you told me that will be
16 multitasking. I said well, if helping the
17 customer was multitasking, then it was.

18 But if I needed to stop what I was
19 doing because I cannot pay attention, I mean
20 that wouldn't be good customer service.

21 If I kept packing a shelf and
22 talking to a customer, I need to stop what I
23 doing and then do one thing at a time, then help
24 the customer, which was my priority, you know.
25 I will help the customer. Definitely.

ACKNOWLEDGMENT OF DEPONENT

I, JOSE R. SANTOS, do hereby
acknowledge that the same is a true,
correct and complete transcription of the
testimony given by me, and any corrections
appear on the attached errata sheet signed
by me.

(Date)

(Signature)

Exhibit FFF

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

YATRAM INDERGIT, on behalf	
of himself and others	Action No.
similarly situated,	#1:08-cv-09361-PGG-
Plaintiffs,	HBP
vs.	
RITE AID CORPORATION, RITE	
AID OF NEW YORK, INC., and	
FRANCIS OFFOR as Aider &	
Abettor,	
Defendants.	

250 PARK AVENUE

NEW YORK, NEW YORK

July 12, 2011 - 10:00 A.M.

DEPOSITION of MICHAEL SIMONS, before S. Arielle Santos, Registered Professional Reporter, Certified Shorthand Reporter, Certified LiveNote Reporter and Notary Public.

1 manager on staff at all times?

2 A Yes.

3 MS. REHMAN: Objection

4 to form.

5 BY MR. SCOTT:

6 Q Who ran the overnight

7 stocking crew?

8 A One of the shift

9 supervisors.

10 Q Did that person volunteer

11 for that job?

12 A Yes.

13 MS. REHMAN: Objection

14 to form.

15 BY MR. SCOTT:

16 Q That is a tough job to

17 assign someone?

18 A Yes.

19 Q Okay. Does that person like

20 working overnight?

21 MS. REHMAN: Objection

22 to form.

23 THE WITNESS: Yes.

24

25 MICHAEL SIMONS

1 BY MR. SCOTT:

2 Q And that's something that
3 they informed you?

4 A Yes.

5 Q And so based on that
6 information you assigned them that duty?

7 MS. REHMAN: Objection
8 to form.

9 THE WITNESS: Yes.

10 BY MR. SCOTT:

11 Q How many hours a week did
12 you work?

13 A Sixty, sometimes more.

14 Q Ever work fifty?

15 A When I was training.

16 Q So your hours increased when
17 you took over the store?

18 A Yes.

19 Q You said sometimes more?

20 A Sometimes more.

21 Q What would cause you to work
22 more hours?

23 A Lowering the store, lead
24 hours that I could give out. I would get

25 MICHAEL SIMONS

1 my hours constantly cut.

2 Q Labor budget?

3 A Right.

4 Q Do you know how the labor
5 budget is calculated?

6 A No. I don't know anymore.
7 I don't remember.

8 Q The labor budget is based
9 off the volume of the store, correct?

10 A Correct.

11 Q And as the some volume of
12 the store fluctuates the labor budget
13 fluctuates?

14 A Correct.

15 Q So you have if a higher
16 volume, you are going to have more
17 employee hours?

18 MS. REHMAN: Objection
19 to form.

20 THE WITNESS: Correct.

21 BY MR. SCOTT:

22 Q If you have lower volume,
23 the labor budget is going to go down,
24 right?

25 MICHAEL SIMONS

1 lab?

2 A No.

3 Q Did you have any employees
4 that you considered to be problematic
5 employees?

6 MS. REHMAN: Objection
7 to form.

8 THE WITNESS: No.

9 BY MR. SCOTT:

10 Q All of your employees were
11 good employees?

12 MS. REHMAN: Objection
13 to form.

14 THE WITNESS: Yes.

15 BY MR. SCOTT:

16 Q As the store manager, one of
17 your responsibilities is to make sure
18 everyone is in dress code?

19 MS. REHMAN: Objection
20 to form.

21 THE WITNESS: Correct.

22 BY MR. SCOTT:

23 Q They have to wear the
24 Rite-Aid outfit?

25 MICHAEL SIMONS

1 A Right.

2 Q That includes the pharmacy
3 tech and cashiers, correct?

4 A Yes.

5 Q Did you ever have to send an
6 employee home for being out of the dress
7 code?

8 A No.

9 Q Would you normally open or
10 close your store?

11 A Normally both.

12 Q You'd normally do both?

13 A Open and close.

14 Q How many days a week did you
15 open and close?

16 A Five. Actually, sometimes
17 six.

18 Q Five or six?

19 A Hm-hm.

20 Q You were there from 9:00 to
21 9:00?

22 A Correct.

23 Q You took a break?

24 A Cigarette break.

25 MICHAEL SIMONS

1 Q Lunch break?

2 A No.

3 Q What is the opening routine
4 that you had?

5 MS. REHMAN: Objection
6 to form.

7 BY MR. SCOTT:

8 Q Do you know what I mean by
9 that?

10 A Yes.

11 Q Okay.

12 A Open the store, make sure
13 the cash is correct, that the safe cash
14 counts right, doing a deposit from the
15 previous night, running reports, making
16 sure the registers have their tills
17 counted out, and make sure the front of
18 the store outside was clean.

19 Q A till is a drawer with
20 money in it?

21 A Correct.

22 Q What reports were you
23 running in the morning?

24 A Your stock -- your

25 MICHAEL SIMONS

1 employees for higher-volume times of the
2 day?

3 A Yes.

4 Q So you were trying to
5 forecast two weeks out when those high
6 volumes would be?

7 MS. REHMAN: Objection
8 to form.

9 THE WITNESS: Yes.

10 BY MR. SCOTT:

11 Q And you are basing that on
12 your past experience when customers are
13 coming into the store?

14 A Yes.

15 Q How many employees did you
16 schedule to stock the truck, the
17 overnight shift?

18 A Five.

19 Q Did that include shift?

20 A That included shift.

21 Q How many employees did you
22 schedule to receive the truck during
23 business hours?

24 A One.

25 MICHAEL SIMONS

1 Q One extra?

2 A One extra -- no. One
3 person, plus myself.

4 Q And that one person, do you
5 remember who that person was?

6 A It was either Donnie or -- I
7 don't remember the other kids' names.

8 Q When that -- when Donnie
9 came in or the other person came in for
10 the truck, were they just offloading the
11 truck?

12 A Correct.

13 Q Other people were running
14 the registers?

15 A Correct.

16 Q Would you personally offload
17 the truck yourself?

18 A Not all the time, but most
19 of the time.

20 Q Did the truck pull up just
21 on the street?

22 A In the back area, yes.

23 Q When you developed your work
24 list in the mornings, would you post it

25 MICHAEL SIMONS

1 in the office?

2 MS. REHMAN: Objection
3 to form.

4 THE WITNESS: I would
5 basically post -- not post
6 in the office. I would give
7 it to the sales supervisors
8 too and go over with the
9 employees that came in with
10 the schedule what they had
11 to do.

12 BY MR. SCOTT:

13 Q Okay. So employees would
14 come in, you had the list, and you tell
15 them what they had to do that day?

16 MS. REHMAN: Objection
17 to form.

18 THE WITNESS: Correct.

19 BY MR. SCOTT:

20 Q You said you assigned two
21 employees you were comfortable assigning
22 Plan-o-grams to, right?

23 MS. REHMAN: Objection
24 to form.

25 MICHAEL SIMONS

1 of any shipments that are coming in by
2 individual vendors.

3 Q Okay. Were you required to
4 work on the register?

5 A Yes.

6 Q Were you required to clean?

7 A Yes.

8 Q Sweep?

9 A Yes.

10 Q Mop?

11 A Yes.

12 Q Were you required to stock
13 shelves?

14 A Yes.

15 Q Unload trucks?

16 A Yes.

17 Q Were you -- when you
18 discussed earlier about pricing items,
19 who determined what the price of an item
20 would be?

21 A Corporate.

22 Q Did you have any independent
23 discretion as to what the price of the
24 item would be in a store?

25 MICHAEL SIMONS

1 MR. SCOTT: Object to
2 form.

3 THE WITNESS: Only if
4 it was problem with
5 competitive price or if it
6 was an item that was on sale
7 but wasn't list -- was in
8 the book but wasn't listed
9 on sale on the floor.

10 BY MS. REHMAN:

11 Q In those situations would
12 you have to discuss the price with the
13 district manager or could you make that
14 decision on your own?

15 A That, I could make on my
16 own.

17 Q Did you have full authority
18 to hire without the approval of the
19 district manager or HR?

20 MR. SCOTT: Objection.

21 THE WITNESS: Not full
22 authority.

23 BY MS. REHMAN:

24 Q Did you have full authority

25 MICHAEL SIMONS

1 to fire without the approval of the
2 district manager or HR?

3 A No.

4 MR. SCOTT: Objection
5 to form to the last
6 question.

7 BY MS. REHMAN:

8 Q Did you have full authority
9 to discipline an employee without
10 approval from the district manager or HR?

11 MR. SCOTT: Object to
12 form.

13 THE WITNESS: It
14 depended on the disciplinary
15 action.

16 BY MS. REHMAN:

17 Q For termination, you said
18 that did you not have?

19 A No.

20 MR. SCOTT: Object to
21 the form.

22 BY MS. REHMAN:

23 Q Did human resources conduct
24 background checks on any new hires or

25 MICHAEL SIMONS

1 candidates for hiring?

2 A Yes.

3 MR. SCOTT: Object to
4 the form.

5 BY MS. REHMAN:

6 Q And if an HR background
7 check came back negative where they could
8 not -- or they didn't pass the background
9 check, were you allowed to hire that
10 employee?

11 A No.

12 MR. SCOTT: Object to
13 form.

14 BY MS. REHMAN:

15 Q How much time did you spend
16 on the register each day?

17 MR. SCOTT: Object to
18 form.

19 THE WITNESS:
20 Three hours, maybe.
21 Sometimes more.

22 BY MS. REHMAN:

23 Q Okay. And where were the
24 registers located in the store?

25 MICHAEL SIMONS

1 A Front end of the store.

2 Q And when you were on the
3 register those three or four hours in the
4 front of the store, could you see every
5 employee in the store?

6 A No.

7 Q Could you effectively
8 supervise every employee in the store
9 while you were on the register?

10 A No.

11 MR. SCOTT: Object to
12 form.

13 BY MS. REHMAN:

14 Q When were you stocking
15 shelves, could you see every employee in
16 the store?

17 A No.

18 MR. SCOTT: Object to
19 form.

20 BY MS. REHMAN:

21 Q Could you see over the
22 shelves?

23 A No.

24 Q Could you effectively

25 MICHAEL SIMONS

1 supervise every employee when you were

2 stocking the shelves?

3 A No.

4 MR. SCOTT: Object to

5 form.

6 BY MS. REHMAN:

7 Q When were you in the

8 backroom, could you see the front of the

9 store?

10 A No.

11 Q Could you effectively

12 supervise employees working in the front

13 of the store?

14 A No.

15 MR. SCOTT: Object to

16 form.

17 BY MS. REHMAN:

18 Q When you were cleaning the

19 store, when mopping or sweeping, could

20 you see all employees in the store?

21 A No.

22 MR. SCOTT: Object to

23 form.

24 BY MS. REHMAN:

25 MICHAEL SIMONS

1 Q Could you supervise all the
2 employees in the store when you were
3 mopping or when you were sweeping or
4 cleaning?

5 A No.

6 MR. SCOTT: Object to
7 form.

8 BY MS. REHMAN:

9 Q Why were you cleaning?

10 A Because I was the only one
11 in the store at the time.

12 Q Why were you unloading the
13 trucks?

14 A They had cut my hours; so I
15 had to go and schedule myself so I
16 wouldn't have to ruin the schedule for
17 the people that did the overnight to get
18 the merchandise out.

19 Q You said they cut your
20 hours.

21 Who cut your hours?

22 A The district manager.

23 Q Why were you stocking?

24 A Because they didn't have

25 MICHAEL SIMONS

1 enough payroll in the store to cover
2 stocking the shelves.

3 Q And why were you on the
4 register?

5 A Same reason, not enough
6 payroll.

7 Q Why didn't you assign those
8 tasks to hourly associates?

9 A I didn't have that many
10 hourly associates who could come in
11 because of the payroll situation.

12 Q How many hours did you start
13 with in your labor budget when you first
14 started working?

15 A 237, I believe.

16 Q Did that amount of hours
17 stay the same or did it increase or
18 decrease?

19 A Decreased.

20 Q Before you left the store, I
21 guess when were you leaving the store --
22 when you left the store, how many hours
23 did you have left in your labor budget?

24 A 187.

25 MICHAEL SIMONS

1 Q Could you effectively
2 schedule employees with the 180 hours?

3 A No.

4 MR. SCOTT: Object to
5 form.

6 BY MS. REHMAN:

7 Q Were your sales goals
8 changed when your labor budget decreased?

9 A No.

10 Q Did the hours of your store
11 change when your labor budget decreased?

12 A No.

13 Q Did you have any authority
14 in deciding what your labor budget would
15 be?

16 A No.

17 Q You mentioned earlier that
18 you were terminated over a bottle of
19 orange juice.

20 Can you describe the
21 circumstances of your termination and
22 that incident.

23 A I was supposed to be off
24 that day. I got a call from district

25 MICHAEL SIMONS

1 manager. There was merchandise in the
2 back outside area that the previous
3 manager had built up. It's bottles and
4 cans and deposits. And the RM saw it,
5 said I need to go in and clean it up
6 immediately. I went in on my day off,
7 got involved not only in cleaning that
8 but also getting some merchandise out. I
9 was up and down, running down ladders.
10 I grabbed an orange juice from the
11 refrigerator, put it down in the
12 stockroom while I was running up and down
13 the ladder, and came back down drank the
14 orange juice, forgot to pay for it.

15 Q And you said your district
16 manager told to you clean up the bottles
17 and cans?

18 A Yes.

19 Q You had also discussed
20 earlier about training new hires or
21 employees.

22 Did you use any materials to
23 train those employees?

24 A Just what was on the

25 MICHAEL SIMONS

1 A C K N O W L E D G E M E N T

2 STATE OF New York

3 COUNTY OF Queens

4

5 I, the undersigned, hereby
6 certify that I have read the transcript
7 of my testimony taken under oath in my
8 deposition; that the transcript is a true
9 and complete and correct record of my
10 testimony, and that the answers on the
11 record as given by me are true and
12 correct.

13

14

15

16

MICHAEL SIMONS

17

18

before me

19

20

21

22

23

24

25

Signed and subscribed to

This 2 day of

August,

2011.

DARLENE COOPER
Notary Public, State of New York
No. 01CO606696
Qualified in Suffolk County
Commission Expires Nov. 19, 2013

Darlene Cooper
Notary Public

Exhibit GGG

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Richard D. Smith

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August 3, 2011

Page 1

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

SHIRLEY CRAIG,)	
)	
Plaintiff,)	
)	
vs.)	CIVIL ACTION NO.
)	4:08-CV-02317
RITE AID CORPORATION and)	
ECKERD CORPORATION d/b/a)	
RITE AID,)	
)	
Defendants.)	

DEPOSITION OF RICHARD D. SMITH, taken pursuant to notice dated July 22, 2011, at the Executive Office Center, 477 Congress Street, Portland, Maine, on August 3, 2011, commencing at 8:59 A.M., before Lisa S. Bishop, RPR, RMR, a Notary Public in and for the State of Maine.

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Richard D. Smith**

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1 A Yes.

2 Q What about the South Paris location, was it a
3 stand-alone store as well?

4 A Yes.

5 Q And what was the surrounding neighborhood of the
6 South Paris store like?

7 A It was intown.

8 Q Was it in a commercial center or was it more of a
9 residential area?

10 A Com -- I will just say commercial. Across the
11 street from the school, so --

12 Q What were the store hours at the Bethel store
13 location to the best of your recollection?

14 A 8:00 to 9:00.

15 Q Every day of the week?

16 A Every day.

17 Q What about the South Paris location?

18 A Same.

19 Q Did you ever work at a 24-hour location?

20 A No.

21 Q Did the store hours vary based upon the time of
22 year like around Christmastime?

23 A No.

24 Q I'm sorry, you never worked in a 24-hour location;
25 is that correct?

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1 A Not in a 24, no.

2 Q I'm sorry?

3 A I never worked in a 24-hour.

4 Q How often did the truck come at the Bethel store
5 location?

6 A Once a week.

7 Q And at the South Paris store?

8 A Once a week.

9 Q What were the differences in your job duties
10 between an assistant store manager and a store manager for
11 Rite Aid?

12 A I'm sorry, can you ask that again, please?

13 Q Sure. What were the differences in your job
14 duties during the time that you worked as an assistant
15 store manager as opposed to a store manager for Rite Aid?

16 A Are you asking what the differences are?

17 Q Yes.

18 A I did the same thing as the hourlies did.
19 Everything they did, I did right with them.

20 Q Did you have additional responsibilities as a
21 store manager?

22 A Additional responsibilities would be if anything
23 goes wrong, I'm the one that is going to get burned.

24 Q You were responsible for scheduling, is that
25 correct, as a store manager?

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1 A I was -- I was not responsible. I needed to make
2 sure -- I did it and also the hourly supervisors could do
3 it as well.

4 Q The shift supervisors?

5 A Correct.

6 Q As an assistant manager, did you do any
7 scheduling?

8 A No.

9 Q Who did the scheduling during the time you worked
10 as an assistant manager?

11 A Dan.

12 Q Did he delegate that responsibility to anyone
13 else?

14 A To the best of my recollection, no.

15 Q Were you ever shown or taught how to do the
16 scheduling?

17 A I was shown how it looked in the system, but as
18 far as going in and physically doing it, no.

19 Q How did you learn to do that?

20 A On my own.

21 Q Who showed you how it looked on the system?

22 A A key.

23 Q And was that when you were a store manager or an
24 assistant store manager?

25 A As an assistant.

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1 Q During the closing shift?

2 A Correct.

3 Q How many hours would you estimate then that you
4 worked on a closing shift?

5 A On some of the nights that you close, they would
6 have somebody come in and do the floors. They would come
7 through and wash them down and buff them. That was once a
8 week. So I want to say -- between the two nights, I would
9 say probably a good two-and-a-half hours between the two
10 nights.

11 Q An additional two-and-a-half hours?

12 A Between the two days, so each -- I would say if I
13 did a closing shift and I had to wait until everybody is
14 out of the building, do my thing, you know, whatever I
15 needed to do obviously, and shut the store down and arm it,
16 and then the next night, they would have somebody come in
17 and do the floors, so the night that the person would come
18 in and do the floors, I was there a good hour easy after
19 the store had closed.

20 Q And it's because you were waiting for somebody to
21 finish the floors?

22 A Correct.

23 Q And because you couldn't leave that person alone
24 in the store unsupervised?

25 A Correct.

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1 Q So your estimate is that over the course of a
2 week --

3 A Over the course of a week, from my schedule, I
4 estimated it to be roughly 54 hours.

5 Q And that's during the time that you worked as an
6 assistant store manager?

7 A Yes.

8 Q Would that be true also during the time that you
9 worked as a store manager?

10 A More than that.

11 Q You worked additional hours during the time you
12 were a store manager?

13 A Yes.

14 Q Why was that?

15 A I didn't have -- I only had one -- only had one
16 key, so it was just -- there was only me and her, so
17 somebody -- somebody had to be there. And I know at least
18 almost a good week as a store manager, I worked from the
19 time we opened until the time we closed, I was the man
20 basically. I only had one other key. They have to have
21 their time off, you know, by law, and so I was stuck.

22 Q So you were responsible for everything that went
23 on from opening to close?

24 A As a store manager, during that time.

25 Q How many hours a week would you estimate that you

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1 worked during the time that you were a store manager?

2 A 60.

3 Q Now you mentioned during the time that you were an
4 assistant manager, you would do things like counting down
5 the drawers. What other things would you have to do after
6 the store had closed as an assistant store manager?

7 A Basically take out the trash, make sure the
8 cashiers -- well, they do anyway, but they have big
9 blinders on the windows and I would just go around and shut
10 them and then arm it.

11 Q And it's the manager's job to take out the trash;
12 is that correct?

13 MR. MIGLIACCIO: Objection. Vague. Are you
14 talking about manager or assistant store manager?

15 MS. MOELLER: The manager on duty.

16 A It is everybody's.

17 Q Is it a manager's job to ensure that merchandise
18 doesn't get put within the trash can, were you ever trained
19 about anything like that?

20 A No.

21 Q No. So everybody takes out the trash?

22 A Correct.

23 Q Did you have to review, during the time that you
24 were a store manager, employee punch records to make sure
25 employees were punching in and out?

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1 A No.

2 Q You never did that?

3 A No.

4 Q How many employees worked in the pharmacy at the
5 Bethel store location?

6 A Estimating, five.

7 Q Is that including the pharmacist?

8 A Yes.

9 Q How many pharmacists worked at the Bethel store
10 location?

11 A One.

12 Q At the South Paris store location, how many
13 employees would you estimate worked in the pharmacy?

14 A Six.

15 Q And how many of those six were pharmacists?

16 A Two.

17 Q As the store manager at the South Paris location,
18 were you responsible for making the schedule for the
19 pharmacy?

20 A No.

21 Q That was left to the pharmacist?

22 A Yes.

23 Q At the Bethel store location, do you know who made
24 the schedule for the pharmacy?

25 A No.

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1 A Correct.

2 Q But you didn't have the discretion to decide
3 whether to do those tasks during the time that you were an
4 assistant store manager?

5 A No.

6 Q Would all of these responsibilities listed under
7 your experience as an assistant store manager for Rite Aid
8 have been your responsibilities during the time that you
9 worked as a store manager for Rite Aid?

10 A No.

11 Q Which ones would not have been one of your
12 responsibilities as a store manager for Rite Aid?

13 A None. It's dictated. I'm told what to do.

14 Q By whom?

15 A Corporate.

16 Q Corporate?

17 A Corporate or a DM, as a store manager.

18 Q As a store manager, you were not responsible for
19 the day-to-day store operations?

20 A I don't know if you would use the word responsible
21 or not, but basically, that's what I was told to do, so
22 it's either I did it or I would probably be gone.

23 Q Let's be clear. I didn't use the word
24 responsible, Mr. Smith. You used the word responsible here
25 in your resume.

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1 A I understand.

2 MR. MIGLIACCIO: Objection. You are asking him
3 about -- this doesn't say anything about his job as a store
4 manager, so --

5 MS. MOELLER: And that's why I'm asking him.

6 Q You used the word -- the phrase responsible for
7 day-to-day store operations. Would you agree that that was
8 true during the time that you worked as a store manager?

9 A It's what I was paid to do.

10 Q Okay. You also in the second bullet state
11 responsible for ad ordering and maintaining stock. Is that
12 true during the time that you worked as a store manager for
13 Rite Aid?

14 A No.

15 Q Okay. Who was responsible for that?

16 A The system automatically orders itself.

17 Q So you were not responsible for maintaining in
18 stock at the store during the time that you worked as a
19 store manager for Rite Aid?

20 A No.

21 Q Who was responsible for deposits and balance of
22 cash handling during the time that you were a store manager
23 for Rite Aid?

24 A Whoever. I did it or the shift leader did it.
25 Whoever actually did the deposit, they are the ones who

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1 were responsible for it.

2 Q So if it was the shift supervisor doing it, it was
3 the shift supervisor's responsibility?

4 A Yes, if something went wrong, it's their fault.

5 Q Wouldn't you agree as the store manager, you were
6 ultimately responsible for everything that went on in your
7 store?

8 A I don't know how to give an answer to that one.

9 Q I mean you told me earlier essentially that the
10 buck stops with you; isn't that correct?

11 A As the top man on the totem pole, but I mean we
12 are going -- you know, if we are going -- you know, if
13 we're going into me being a store manager, you know, to me,
14 I don't understand why I'm even being questioned being a
15 store manager when I'm here for an assistant store manager
16 deposition, so it is kind of getting confusing.

17 Q All right. Well, I'm asking you specifically
18 about the time that you were a store manager. Would you
19 agree that you were ultimately responsible for everything
20 that happened in your store on a day-to-day basis?

21 A As a store manager, yes, not as an assistant store
22 manager, no.

23 Q All right. Thank you. All right. So it's your
24 testimony then, Mr. Smith, that in this resume that you
25 submitted to Rite Aid, that this had not necessarily been

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DEPONENT SIGNATURE PAGE

CAPTION: Craig vs. Rite Aid Corporation

DEPONENT: Richard D. Smith

I _____, acknowledge that I have read
pages ____ through ____ inclusive of the transcript of my
deposition taken on August 3, 2011.

I further acknowledge that:

(check appropriate language)

_____ the same is a true, correct, and complete
transcription of the answers given by me to the questions
recorded therein. OR

_____except for the changes noted on the attached errata
sheet, the same is a true, correct, and complete
transcription of the answers given by me to the questions
recorded therein.

Deponent

Subscribed and sworn to before me
this ____ day of _____, 2011.

Notary Public_____